



(31,359)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 636

FIRST NATIONAL BANK OF HARTFORD, WISCONSIN,
PLAINTIFF IN ERROR,

vs.

CITY OF HARTFORD

IN ERROR TO THE SUPREME COURT OF THE STATE OF WISCONSIN

INDEX

	Original	Print
Proceedings in supreme court of Wisconsin.....	1	1
Writ of error and return.....	1	1
Petition for writ of error and order allowing same.....	4	2
Order allowing writ of error.....	14	7
Assignments of error and prayer for reversal.....	16	7
Citation and service..... (omitted in printing) ..	20	9
Certificate of lodgment..... (" " ") ..	24	
Bond on writ of error..... (" " ") ..	26	9
Caption	31	9
Record from circuit court of Washington County.....	31	9
Notice of appeal..... (omitted in printing) ..	32	
Summons	34	10
Bill of complaint.....	35	10
Answer	42	13
Minute entry of judgment.....	49	16
Findings of fact and conclusions of law.....	50	17
Defendant's exceptions to findings of fact and conclusions of law (omitted in printing).....	56	
Defendant's requested findings of fact and conclusions of law (omitted in printing).....	61	
Defendant's exceptions to refusal of court to make re- quested findings of fact and conclusions of law (omitted in printing).....	66	
Judgment	72	20
Bill of exceptions.....	74	20
Appearances of counsel.....	76	20
Testimony of Jacob Hahn.....	76	21
William Radke.....	81	24

	Original	Print
Testimony of John G. Liver.....	82	24
Hugh W. Grove.....	114	46
Edward C. Schauer.....	120	51
John G. Liever (recalled).....	126	56
W. T. Leins.....	126	57
C. W. Sayles.....	127	57
August F. Westphall.....	129	59
William Radtke (recalled).....	130	59
E. W. Sawyer.....	132	61
Charles Friday.....	133	62
Jacob Hahn (recalled).....	134	63
John G. Liever (recalled).....	135	64
Edward Russell.....	137	65
Plaintiff's Exhibit No. 1—Bank stock of First National Bank, City of Hartford, Wis. (omitted in printing) ..	139	
Plaintiff's Exhibit No. 2—Tax protest for State banks (omitted in printing).....	140	
Plaintiff's Exhibit No. 3—Tax of 1921, First National Bank (omitted in printing).....	141	
Defendant's Exhibit No. 1—Report of the condition of the First National Bank, April 28, 1921.....	143	66
Defendant's Exhibit No. 2—Report of the condition of the First National Bank, June 30, 1921.....	144	66
Defendant's Exhibit No. 3—Report of the condition of the First National Bank, February 21, 1921.....	145	66
Defendant's Exhibit No. 4—Report of the condition of the First National Bank, September 6, 1921.....	146	66
Reporter's certificate.....(omitted in printing) ..	147	
Order to show cause.....(" " ") ..	148	
Affidavit of E. W. Sawyer....(" " ") ..	149	
Minutes of meeting of common council (omitted in printing)	151	
Hearing on order to show cause (omitted in print- ing)	153	
Orders opening cause.....(omitted in printing) ..	156	
Colloquy between court and counsel.....	160	66
Order settling bill of exceptions.....	162	67
Clerk's certificate.....(omitted in printing) ..	164	
Petition of cities of Oshkosh and Merrill to file brief amici curiæ.....(omitted in printing) ..	167	
Order continuing cause.....(" " ") ..	169	
Stipulation setting cause.....(" " ") ..	170	
Argument and submission.....	172	67
Judgment	173	68
Opinion, Rosenberry, J.....	175	68
Dissenting opinion, Vinje, J.....	212	90
Motions for a rehearing.....(omitted in printing) ..	221	
Order retaining cause.....(omitted in printing) ..	224	
Order denying petition for rehearing.....	225	95
Clerk's certificate.....	226	95
Stipulation as to parts of record to be printed.....	227	96

[fol. 1] **IN SUPREME COURT OF WISCONSIN****WRIT OF ERROR AND RETURN—Filed July 1, 1925****UNITED STATES OF AMERICA, ss:**

The President of the United States of America to the Honorable the Justices of the Supreme Court of the State of Wisconsin, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the Supreme Court of the State of Wisconsin before you or some of you, being the highest court of law or equity of the said State of Wisconsin in which a decision could be had in the suit between First National Bank of Hartford, Wisconsin, and City of Hartford, wherein the State of Wisconsin was permitted to intervene, and wherein was drawn in question the validity of a statute of said State and also of an authority exercised under said State on the ground of their being repugnant to the Constitution and laws of the United States and the decision was in favor of their validity, and wherein rights, privileges and immunities were claimed under the Constitution and a statute of the United States and the decision was against a right, privilege and immunity specially set up and claimed under such Constitution and statute, a manifest error hath happened to the great damage of the said First National Bank of Hartford, as by its petition appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in said Supreme Court at Washington, D. C., within thirty (30) days from the date hereof, that the record and [fol. 2] proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable William Howard Taft, Chief Justice of the Supreme Court of the United States this 1st day of July in the year of our Lord One Thousand Nine Hundred and Twenty-five (1925).

H. C. Hale, Clerk of the District Court of the United States for the Western District of Wisconsin, by Fred W. French, Chief Deputy. (Seal of U. S. District Court, Western Dist. of Wisconsin, Madison.)

Allowed by me this 1st day of July, 1925.

A. J. Vinje, Chief Justice of the Supreme Court of the State of Wisconsin. (Seal of Supreme Court of Wisconsin.)

STATE OF WISCONSIN,
Supreme Court, ss:

The return to the within writ appears by the schedule hereto annexed.

The return of the Justices of the Supreme Court of the State of Wisconsin.

Arthur A. McLeod, Clerk. (Seal of Supreme Court of Wisconsin.)

[fol. 3] [File endorsement omitted.]

[fol. 4] IN SUPREME COURT OF WISCONSIN

PETITION FOR WRIT OF ERROR AND ORDER ALLOWING SAME—Filed
July 1, 1925

To the Honorable Aad J. Vinje, Chief Justice of the Supreme Court of the State of Wisconsin, and to the other Justices of said Supreme Court:

The petition of First National Bank of Hartford, Wisconsin, plaintiff in error, respectfully represents as follows:

1. The plaintiff in error, the First National Bank of Hartford, Wisconsin, is and at all of the times hereinafter mentioned was a national banking association organized and existing under and by virtue of the National banking act, engaged in the banking business at the City of Hartford in the State of Wisconsin, with a paid-up capital stock of Fifty Thousand Dollars (\$50,000), consisting of five hundred (500) shares of the par value of One Hundred Dollars (\$100.) each, all owned by various shareholders of said bank.

2. The City of Hartford, one of the defendants in error, hereinafter referred to as "said City", is a municipal corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin and authorized to levy and collect taxes for city, county and state purposes.

3. The plaintiff in error, being a national banking association and an agency of the national government, is privileged and immune from all taxation by the state or any subdivision thereof or municipality therein, whether levied against its property or its shares of stock, except within the limits prescribed by and to the extent provided in Section 5219 of the Revised Statutes of the United States.

4. During the year 1921 the taxing officers of the said City in form assessed and levied a personal property tax for said year on all of [fol. 5] the shares of stock of the plaintiff in error at the then prevailing tax rate in the assessment district in which the bank of the plaintiff in error was located, to-wit: at the rate of \$3.177 on each

\$100 of the assessed valuation of said stock, which tax on the whole of said stock amounted to Two Thousand Eight Hundred Fifty-nine and 30/100 Dollars (\$2,859.30). Said taxes were entered upon the tax roll of said City for said year and in due time the tax roll for said year, with the taxes so in form assessed and levied against said shares of stock spread thereon and the warrant for the collection thereof, were placed in the hands of the City Treasurer of said City for the collection of said taxes.

5. Said taxes were assessed and levied under and pursuant to Sections 70.31, 70.37, 70.38, 70.39 and 70.40 of the Wisconsin Statutes for 1921, which provided specifically for the assessment and taxation of shares of stock in every bank or banking association, whether organized under the authority of any law of the State of Wisconsin or any act of the Congress of the United States, notwithstanding the fact that by Subdivision (10) of Section 70.11 of said statutes it was provided that all moneys or debts due or to become due to any person and all stocks and bonds (being all the moneyed capital within said state) other than shares of stock in banks and banking associations, should be wholly exempt from taxation. By reason of the fact that the statutes of said State thus provided for the taxation of shares of stock in national banks, while all moneyed capital within the State other than shares of stock in state and national banks was wholly exempted from taxation, said statutes, in so far as they provided for the taxation of shares of stock in national banking associations, were invalid on the ground of their being repugnant to the [fol. 6] Constitution of the United States and to Section 5219 of the Revised Statutes of the United States.

6. Acting under and pursuant to the Statutes aforesaid, the taxing officers of said City did not make any assessment against or levy any tax for said year upon any moneys or moneyed capital in the hands of any individual citizens of said City or against debts due or to become due to individual citizens or against any interest-bearing bonds or against any shares of stock in the hands of any of such citizens in any corporations except banking corporations, but suffered and permitted the same and the whole thereof to be and remain entirely free from assessment and exempt from taxation for said year. Notwithstanding such exemption there was during said year a very large amount of moneyed capital in the hands of individual citizens of said City running into many hundreds of thousands of dollars and entering into competition with the banking business, including the banking business of the plaintiff in error, that was neither assessed for taxation nor taxed, and there were vast amounts of moneyed capital in the hands of individual citizens of said State running into millions of dollars that entered into competition with the banking business, including the banking business of the plaintiff in error, which were neither assessed for taxation nor taxed. As a result thereof the shares of stock of the plaintiff in error, as well as the shares of stock of other national banking corporations doing business in said State, were taxed or attempted to be taxed at a much greater rate than other moneyed capital in

the hands of individual citizens of said City and State that entered into competition with the banking business, including the banking business of the plaintiff in error, and the taxation of said shares of [fol. 7] stock in said banks, including the plaintiff in error, and the total exemption of said amounts of moneyed capital in the hands of individual citizens entering into competition with the banking business resulted in an unjust, illegal and discriminating tax against the shares of stock in the plaintiff in error. By reason thereof said tax is invalid on the ground of its being repugnant to the Constitution and laws of the United States and there is denied to the plaintiff in error the privilege and immunity from taxation under the Constitution and Statute of the United States aforesaid.

7. On February 28, 1922, while said tax roll and warrant, with said taxes in form assessed against the shares of the plaintiff in error so spread thereon, were in the hands of the Treasury of said City for collection of taxes, the plaintiff in error, on behalf of its stockholders as well as in its own behalf and interest, and in the manner provided for under the statutes of said State, paid said taxes under protest to the City Treasurer of said City in the amount of Two Eight Hundred Fifty-nine and 30/100 Dollars (\$2,859.30). At the time the plaintiff in error so paid said taxes it accompanied the payment with and said City accepted the same under a written protest then lodged with said City, stating, among other things, that said taxes were unjust, discriminatory and illegally exacted in violation of the Constitution of the United States and of the Constitution of the State of Wisconsin, by compulsion and under duress and menace of and under threat of the imposition of illegal, unjust and oppressive penalties and the enforcement of an alleged lien on said stock, and further stating that the City Treasurer, to whom the check for said taxes was given, was authorized to cash the same only as an alternative to the resort to distress, the enforcement of [fol. 8] lien or other means provided by law for the enforcement of unpaid taxes, and that the plaintiff in error claimed the right of and would seek all available means for the recovery of such taxes.

8. Thereafter, and on February 21st, 1923, the plaintiff in error commenced an action against said City in the Circuit Court for Washington County, in said State of Wisconsin, in which said City is located, for the recovery of said taxes so unlawfully collected, as it had a right to do under the laws of the United States and under the laws of said State of Wisconsin.

9. Thereafter such proceedings were duly had that said action was brought on for trial in said Circuit Court for Washington County, upon which trial evidence was offered conclusively showing the existence during the year in question in said City and in the State of Wisconsin of moneyed capital as hereinbefore alleged, and thereupon the judge of said Circuit Court, upon the evidence sointroduced, made and filed his findings, wherein, among other things, he found the existence within said City and within said State during said year of moneyed capital so coming into competition with the business of national banks, including the plaintiff in error, as

hereinbefore alleged, and that said tax was illegal and void, and that the plaintiff in error was entitled to judgment for the recovery thereof. Thereupon, and on February 7, 1924, judgment was entered in said Circuit Court for Washington County in favor of the plaintiff in error and against said City for Three Thousand One Hundred Ninety and 84/100 Dollars (\$3,190.84) damages, together with costs in the sum of One Hundred Thirteen and 50/100 Dollars (\$113.50).

10. Thereafter said City, in the manner provided by the statutes of the State of Wisconsin, appealed from the judgment so entered [fol. 9] to the Supreme Court of said State. Thereafter the Attorney General of the State of Wisconsin by the direction of the Governor thereof and at the instance of the Tax Commission of Wisconsin and by leave of said Supreme Court intervened in said action in said Supreme Court on behalf of the State. Thereafter such proceedings were duly had in said Supreme Court that said cause was brought on for hearing and was heard on February 14, 1925 and was duly argued and submitted on the part of your petitioner and said City and said State, the defendants in error, and your petitioner duly urged that said judgment should be affirmed for the reason that the Wisconsin Statutes aforesaid were invalid in so far as they provided for the assessment and taxation of shares of stock in National banks and were in violation of and repugnant to the Constitution and laws of the United States, and that the tax so assessed and levied denied to the plaintiff in error and to its shareholders the privilege and immunity from taxation otherwise than under and pursuant to Section 5219 of the Revised Statutes of the United States to which they and it were entitled under the Constitution and laws of the United States.

11. On April 7, 1925 the Supreme Court of the State of Wisconsin rendered a decision, which decision under the laws of said State was subject to the right of the plaintiff in error to move for a rehearing, reversing said judgment, holding the said statutes of said State relating to the assessment and taxation of shares of stock in national banks to be valid and not in violation of the laws or Constitution of the United States and not a denial to the plaintiff in error or to its shareholders of the privilege and immunity hereinbefore mentioned, holding said tax valid and not in violation of the laws or Constitution of the United States and not a denial to [fol. 10] the plaintiff in error of the privilege and immunity aforesaid, and reversing the judgment of said Circuit Court and remanding said cause with directions to the trial court to enter judgment dismissing the complaint therein. Thereafter and on May 1, 1925 and within the time allowed therefor under the laws of said State of Wisconsin and the rules of said Supreme Court, the plaintiff in error duly filed a motion for rehearing and duly served and filed its argument in support thereof showing reasons why said decision was erroneous and of right ought to be reconsidered and reversed. Said motion for rehearing was duly submitted on arguments presented by the plaintiff in error and by the defendants in error in

the manner provided by the laws of said State. Thereafter such proceedings were had in said cause under and pursuant to the laws of said State and the rules of said Supreme Court of said State that on June 22, 1925 a final decision was rendered in said cause in said Supreme Court denying said motion for rehearing and affirming the decision theretofore rendered, reversing said judgment and directing said trial court to enter judgment dismissing the complaint of the plaintiff in error.

12. The Supreme Court of the State of Wisconsin is the highest court of the State of Wisconsin in which a decision in this cause can be had.

13. In and by said final decision manifest errors were committed to the great damage of your petitioner because there was drawn in question the validity of a statute of the State of Wisconsin and the validity of an authority exercised under said State on the ground of their being repugnant to the Constitution and laws of the United States and the decision was in favor of their validity, and because rights, privileges and immunities were in said suit set up and claimed [fol. 11] by your petitioner in its own behalf and in behalf of its shareholders under the Constitution of the United States and the decision was against the rights, privileges and immunities so set up and claimed by your petitioner under said Constitution, all of which will more particularly appear from the assignments of errors which is filed with this petition as aforesaid.

Wherefore, your petitioner prays that a writ of error from the Supreme Court of the United States may issue and be allowed to the Supreme Court of the State of Wisconsin and the judges thereof, and that the errors in said decision, finding, determination and judgment may be duly corrected and full and speedy justice done to the parties aforesaid in its behalf, and that a transcript of the records, proceedings and papers in said cause, duly authenticated, may be sent to the Supreme Court of the United States, that citation be granted and signed, that the bond herewith presented be approved, and that upon compliance with the terms of the statutes in such case made and provided such bond and writ of error may operate as a supersedeas.

Dated this 30th day of June, 1925.

Geo. P. Miller, Edwin S. Mack, Arthur W. Fairchild, Gilbert Hardgrove, E. W. Sawyer, Attorneys for the First National Bank of Hartford, Wisconsin, Plaintiff in Error.
E. W. Sawyer, Edward J. Gehl, of Counsel.

[fol. 12] The writ of error as prayed for in the foregoing petition is hereby allowed this 1st day of July, 1925, to operate as a supersedeas with bond in the sum of One Thousand Dollars (\$1,000) conditioned as the law directs.

A. J. Vinje, Chief Justice of the Supreme Court of the State of Wisconsin. (Seal of Supreme Court of Wisconsin.)

[fol. 13] [File endorsement omitted.]

[fol. 14] IN SUPREME COURT OF WISCONSIN

FIRST NATIONAL BANK OF HARTFORD, WISCONSIN, Plaintiff in Error,

vs.

CITY OF HARTFORD and STATE OF WISCONSIN, Defendants in Error

In Error to the Supreme Court of the State of Wisconsin

ORDER ALLOWING WRIT OF ERROR—Filed July 1, 1925

This 1st day of July, 1925, First National Bank of Hartford, Wisconsin, filed herein and presented to me its petition praying that a writ of error from the Supreme Court of the United States to the Supreme Court of the State of Wisconsin may be allowed to bring up for review before the Supreme Court of the United States the final judgment of the Supreme Court of the State of Wisconsin in that certain cause therein mentioned and that a citation issue and the amount of the supersedeas bond be fixed, that a transcript of the record, proceedings and papers in the cause, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as may be proper in the premises.

In consideration whereof, it is ordered that a writ of error herein be and is hereby allowed and that said First National Bank of Hartford, Wisconsin, give bond according to law in the sum of One Thousand Dollars (\$1,000), which bond, when approved, shall act as a supersedeas.

Witness the Honorable Aad J. Vinje, Chief Justice of the Supreme Court of the State of Wisconsin, this 1st day of July, 1925.

A. J. Vinje, Chief Justice of the Supreme Court of the State of Wisconsin. (Seal of Supreme Court of Wisconsin.)

[fol. 15] [File endorsement omitted.]

[fol. 16] IN SUPREME COURT OF WISCONSIN

[Title omitted]

In Error to the Supreme Court of the State of Wisconsin

ASSIGNMENTS OF ERROR AND PRAYER FOR REVERSAL—Filed July 1, 1925

Now comes the above named plaintiff in error, by George P. Miller, Edwin S. Mack, Arthur W. Fairchild and J. Gilbert Hardgrove, its attorneys, and respectfully submits that in the record, proceedings, decision and final judgment of the Supreme Court of the State of

Wisconsin in the above entitled cause there are manifest errors upon which it will rely in and for its prosecution of the writ of error in the above entitled cause, to-wit:

1. The Supreme Court of the State of Wisconsin erred in holding that Sections 70.31, 70.37, 70.38, 70.39 and 70.40 of the Wisconsin Statutes in force in 1921, in so far as the same provided for the assessment and taxation of shares of stock in national banking associations notwithstanding the fact that by Subdivision (10) of Section 70.11 of said Statutes it was provided that all other moneyed capital should be exempted from taxation, were valid laws and within the consent conferred by Section 5219 of the Revised Statutes of the United States, and in refusing to hold that the same were invalid on the ground of their being repugnant to the Constitution of the United States and to Section 5219 of the Revised Statutes of the United States.

[fol. 17] 2. The said Supreme Court erred in refusing to hold that said Statutes were invalid in so far as they provided for the assessment and taxation of shares of stock in national banking associations, on the ground that they operated to deprive the plaintiff in error and its shareholders of the right and privilege of immunity from state taxation otherwise than in the manner and to the extent permitted by Section 5219 of the Revised Statutes of the United States to which, as an agency of the National Government, it was entitled.

3. The said Supreme Court erred in holding the tax assessed and levied against the shares of stock in the plaintiff in error to be a legal tax, and in refusing to hold that said tax was illegal and void on the ground of its being repugnant to the Constitution of the United States and to Section 5219 of the Revised Statutes of the United States.

4. The said Supreme Court erred in refusing to hold that said tax was illegal and void on the ground that it operated to deprive the plaintiff in error and its shareholders of the right and privilege of immunity from taxation by the state otherwise than in the manner and to the extent permitted by Section 5219 of the Revised Statutes of the United States to which, as an agency of the National Government, it was entitled.

5. The said Supreme Court erred in holding it to be a matter of common knowledge that there was no moneyed capital within said state or within said city during said year coming into competition with the business of national banks, notwithstanding the undisputed evidence and the findings of the trial court amply sustained thereby to the contrary.

6. The said Supreme Court erred in reversing the decision of the [fol. 18] Circuit Court for Washington County in the State of Wisconsin, and directing the entry of judgment dismissing the complaint of the plaintiff in error for the recovery of the taxes so illegally assessed, levied and collected from it.

For such errors the plaintiff in error prays that the final judgment and decision of the Supreme Court of the State of Wisconsin made and entered on the 22nd day of June, 1925 be reversed by the Supreme Court of the United States, with directions to affirm the judgment entered in the Circuit Court for Washington County in the State of Wisconsin on the 7th day of February, 1924, all because of errors hereinbefore assigned, and that said plaintiff in error be restored to all things that it has lost by reason thereof.

Dated this 30th day of June, 1925.

E. W. Sawyer, Geo. P. Miller, Edwin S. Mack, Arthur W. Fairchild, J. Gilbert Hardgrove, Attorneys for the First National Bank of Hartford, Wisconsin, Plaintiff in Error.
E. W. Sawyer, Edward J. Gehl, of Counsel.

The foregoing assignment of errors was duly presented to me this 1st day of July, 1925, before allowing the writ of error in such case of even date.

A. J. Vinje, Chief Justice of the Supreme Court of the State of Wisconsin. (Seal of Supreme Court of Wisconsin.)

[fol. 19] [File endorsement omitted.]

[fols. 20-25] CITATION—In usual form, showing service on Herman L. Ekern et al.; filed July 7, 1925; omitted in printing

[fols. 26-30] BOND ON WRIT OF ERROR FOR \$1,000—Approved and filed July 1, 1925; omitted in printing

[fols. 31-33] IN SUPREME COURT OF WISCONSIN

CAPTION

Be it remembered that heretofore, to-wit: on the twelfth day of July in the year of our Lord One Thousand Nine Hundred and Twenty-four came into the office of the Clerk of the Supreme Court of the State of Wisconsin, the City of Hartford, by its attorney and filed in said Court its certain Notice of Appeal, according to the statute in such case made and provided, and also the Return to such appeal of the Clerk of the Circuit Court of Washington County, in said State, in words and figures following, that is to say:

[fol. 34]

[File endorsement omitted]

IN CIRCUIT COURT OF WASHINGTON COUNTY

FIRST NATIONAL BANK, Plaintiff,

vs.

CITY OF HARTFORD, Defendant

SUMMONS—Filed in Circuit Court Nov. 6, 1924; in Supreme Court
July 12, 1924

The State of Wisconsin to the said defendant:

You are hereby summoned to appear within twenty days after service of this summons upon you, exclusive of the day of service, and defend the above entitled action in the court aforesaid, and in case of your failure so to do, judgment will be rendered against you, according to the demand of the complaint, of which a copy is herewith served upon you.

Yours, etc., E. W. Sawyer, Plaintiff's Attorney.

P. O. Address: Hartford, Washington County, Wis.

[fol. 35]

[File endorsement omitted]

IN CIRCUIT COURT OF WASHINGTON COUNTY

[Title omitted]

BILL OF COMPLAINT—Filed in Supreme Court July 12, 1924

The above named plaintiff, appearing by E. W. Sawyer, its attorney, for a cause of action against the defendant alleges:

I

That the plaintiff is a national banking corporation, organized under the laws of the United States, and at all times hereinafter stated, was engaged in the banking business at Hartford, Wisconsin, with a paid up capital stock of (\$50,000.00) Fifty Thousand Dollars, divided into five hundred shares of the par value of One Hundred (\$100.00) Dollars each, which shares were owned by various stockholders of said bank.

II

That the defendant is a municipal corporation of this state, to wit: a city of the fourth class, operating under the general charter law of this state.

III

That Section 5219 of the Revised Statutes of the United States, relating to the right and authority of states and their governmental agencies to tax shares of stock in national banking corporations located therein, expressly provides that such taxation should not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state, which statute and provision were in force at the times hereinafter stated.

[fol. 36]

IV

That Sections 1051 and 1057a of the Wisconsin Statutes in force at the times hereinafter stated, provided that the shares of stock of every bank or banking association within this state, including national banks, should be assessed and tax as personal property in the assessment district where such bank is located, and the taxes levied thereon should be a lien on such shares, and should be subject to levy and sale for the payment of such tax. That Section 1038 of the Wisconsin Statutes in force at the times hereinafter stated, expressly exempted from taxation all moneys, all debts due or to become due to any person, and all bonds and stocks, except the shares of bank stock as above provided.

V

That during the year 1921, the taxing officers of the defendant city of Hartford, pursuant to the requirement of the Wisconsin Statutes above referred to, in form assessed and levied a personal property tax for such year upon the said shares of stock of the plaintiff bank, at the then prevailing tax rate in the assessment district in said city in which said bank was located, to wit; at the rate of \$3.177 on each One Hundred (\$100.00) Dollars of the assessed valuation thereof, which said tax, on the total number of shares of stock of said bank, amounted in the aggregate to the sum of Twenty Eight Hundred Fifty Nine and 30/100 (\$2,859.30) Dollars. That said taxes were entered upon the tax roll of the defendant city for said year, and in due time placed in the hands of the City Treasurer for collection.

That said taxing officers of said defendant city, in accordance with the said provisions of said Section 1038, did not assess or levy any tax for such year against any moneys, debts due or to become due or against any bonds or other shares of stock of any other person or persons in said city, but suffered and permitted the same to remain exempt from taxation as by said Section 1038 provided. That in consequence thereof, the said shares of stock of said plaintiff were [fol. 37] so taxed or attempted to be taxed at a greater rate than other moneyed capital in the hands of other individuals in said city, contrary to and in violation of the restriction so imposed by said Section 5219 of the Revised Statutes of the United States, whereby said tax so in form assessed and levied against said shares of stock in said plaintiff bank was illegal, unauthorized and void, and said taxing

officers were wholly without power or authority to so levy or collect the same.

VI

That on February 28, 1922, and while said tax roll of said city, with such taxes in form against shares of stock of said plaintiff bank, were so spread thereon, was in the hands of said City Treasurer of said city for collection, the said plaintiff, pursuant to the right given it by Section 1057b of the Wisconsin Statutes, paid said tax under protest to the City Treasurer of said City of Hartford, the amount paid being the said sum of Twenty Eight Hundred Fifty-Nine and 30/100 (\$2,859.30) Dollars.

VII

That on January 27, 1923, the plaintiff duly made and filed its claim in writing, which was duly sworn to, against said defendant city, for a refund and repayment of the amount of such illegal and unauthorized tax so paid by it under protest to said city, to wit: for said sum of Twenty Eight Hundred Fifty Nine and 30/100 (\$2859.30) Dollars, and interest from February 28, 1922, a copy of which claim is annexed hereto, and made a part hereof. That said defendant city has failed to allow such claim.

That this action is brought within one year after the payment by plaintiff of such illegal tax under protest as aforesaid.

Wherefore, the plaintiff demands judgment against the defendant for the sum of Twenty Eight Hundred Fifty Nine and 30/100 (\$2,859.30) Dollars, and interest from February 28, 1922, together with its costs of this action.

E. W. Sawyer, Plaintiff's Attorney.

[fol. 38] *Duly sworn to by John G. Liver. Jurat omitted in printing.*

[fols. 39-41] To the City of Hartford, Washington County, Wisconsin, and to the Common Council thereof:

The undersigned First National Bank of Hartford, Wisconsin, a national banking corporation, in behalf of itself, and its stockholders, being aggrieved by the levy and collection by said City of Hartford and its officers, of an unlawful tax assessed for the year 1921, against the shares of stock of said First National Bank, in the name of the several owners thereof, in the sum of Twenty eight Hundred Fifty Nine and 30/100 (\$2,859.30) Dollars, which said unlawful tax was, on February 28, 1922, paid under protest to the City Treasurer of said City, by said First National Bank, in accordance with the statutes of this state, in such cases made and provided, hereby claims and presents its claim against said city, for a refund to said bank of the amount of such illegal tax, namely for the sum of Twenty eight Hundred Fifty Nine and 30/100

(\$2,859.30) Dollars, and interest thereon from February 28, 1922, for the reason that the levy, imposition and collection of said tax was wholly unauthorized and void, in that said shares of stock in said bank were assessed and taxed by said taxing officers of such city at a greater rate than other moneyed capital in the hands of individual citizens of this state, and of the city of Hartford, Wisconsin, and vicinity were assessed and taxed, contrary to the provision of Section 5219 of the Revised Statutes of the United States; that the Supreme Court of the United States has held such a tax to be illegal and void, as claimaint is informed and believes.

Dated January 22, 1923.

First National Bank, by John G. Liver, President.

Duly sworn to by John G. Liver. Jurat omitted in printing.

[fol. 42]

[File endorsement omitted]

IN CIRCUIT COURT OF WASHINGTON COUNTY

[Title omitted]

ANSWER—Filed in Circuit Court Nov. 6, 1923; in Supreme Court July 12, 1924

And now comes the above named defendant, City of Hartford, by J. C. Russell, city attorney, and for answer to the complaint of the plaintiff herein, admits, alleges and denies as follows:

1. It admits the allegations contained in paragraphs one, two and three of said complaint.

2. This defendant further answering alleges that the plaintiff is a National banking corporation and for many years last past, and now is, engaged in the banking business and during said time owned the premises upon which its bank building is situated within the taxing district of the defendant city of Hartford.

3. That Section 5219 of the Revised Statutes of the United States relative to the power of each state to assess and tax shares of stock of National banking associations provides that nothing therein shall prevent all of the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares in assessing taxes imposed by the authority of the State within which the association is located and that the legislature of each State may determine and direct the manner and place of taxing all the shares of National Banking Associations.

4. That Section 1051 and 1057 of the Revised Statutes of Wisconsin provides that all the shares of stock of every bank or banking

association, whether organized under the authority of any law of this State or any of the Acts of Congress of the United States, shall be [fol. 43] assessed and taxed in the assessment district in which such bank is located for the transaction of business, and shall be liable to assessment and taxation as personal property, shall be entered on the assessment roll in the name of the several owners separately from the assessment or other personal property assessable to such owners, and that the valuation of such shares of stock and the taxes thereon shall be separately entered in the tax roll and that the taxes levied thereon should be a lien on such shares and should be subject to the levy and sale for the payment of such tax.

5. That the shares of stock of said plaintiff for many years last past have been, and now are, upon the assessment and tax rolls of said defendant, City of Hartford, in the names of the several owners separately from the assessment of other personal property assessable to such owners.

6. This defendant further answering alleges that the Hartford High School, a separate taxing unit, comprising of the entire city of Hartford, in the year of 1921, for the maintaining of said High School, levied a tax in the sum of \$23,578.00 upon all the taxable property in the city of Hartford, of which the shares of stock described in the complaint were a part and portion thereof; that joint school District No. 4, a separate taxing unit, consisting of the First and Fourth Wards of the city of Hartford and part of the town of Hartford, in the year of 1921 for the purposes of maintaining said District school levied a tax in the sum of \$7,238.00 against all of the taxable property in the First and Fourth Wards of the city of Hartford and which said shares of stock were a part and portion thereof; that the county tax paid by said city of Hartford for the year of 1921 amounted to the sum of \$25,268.51 and that the state tax paid by the city of Hartford for said year amounted to the sum of \$9,539.39; that before any tax was levied by the taxing officers of the city of Hartford, said High School tax, the tax for said joint School District [fol. 44] No. 4, the county and state taxes were levied upon the city and ward property as above set forth.

7. That as defendant is informed and believes, all the officers of said First National Bank and a great number of its stockholders were present at the annual meeting of said High School which levied the tax as aforesaid, acquiesced in and voted for the levying of said tax; that said officers and stockholders were also present at said School District meeting, acquiesced in and voted to levy the tax aforesaid against the taxable property of the First and Fourth Wards of said city of Hartford, which included the shares of stock described in the complaint as aforesaid.

8. That during the year of 1921, the taxing officers of the city of Hartford, pursuant to the requirements of the Wisconsin Statutes, assessed and levied a tax at the rate of \$3.177 on each One Hundred Dollars on all taxable property in the First and Fourth Wards in the city of Hartford; that the shares of stock of said First National

Bank were included in said taxable property and that the tax levied against said shares of stock amounted to the sum of \$2,859.30; that said tax was *entered upon the tax roll for the defendant city for said year of 1921 and in due time placed in the hands of the city treasurer for collection.*

9. That before the first day of June, 1921, John G. Liver, President of the plaintiff bank, made out and delivered to the assessor a statement showing the number and par value of the shares of stock of the plaintiff, the name and residence of each stockholder therein on the preceding first day of May, and the amount of stock owned and held by him on that day;

10. The defendant further alleges that the plaintiff had notice and full knowledge that the assessment was made against each of the owners of said capital stock for the year of 1921, as required by the Wisconsin Statute, and that notwithstanding said notice and knowledge, the plaintiff, at no time objected to the assessment, but acquiesced therein until the 28th day of February, 1922, when complaint was first made to the city treasurer because of said assessment.

11. Defendant further alleges that the Board of Review of the city of Hartford met in the Common Council chambers, in the City Hall, in the city of Hartford, on the 5th day of July, 1921, and continued in session until the 12th day of July, 1921, inclusive, when its business was completed; that due notice, as required by Statute, of the time and place of said meeting was given, by the posting of the notices required by law and also in addition to the posting of said notices, by publishing notice thereof at least ten days prior to the meeting of said Board in the official paper of the city of Hartford, a copy of said notice is hereto attached, made a part hereof and marked Exhibit "A"; that notwithstanding the meeting of said Board and the notice thereof, the plaintiff did not, either in person or by agent, present any objections before said Board to the assessment made against said shares of stock, nor did it present any evidence to such Board to show that said assessment was improper.

12. Defendant further alleges that the defendant did assess and levy a tax for the year 1921 against the stock of Hartford Exchange Bank and First City Bank, State banking institutions doing business within the taxing unit of the defendant City, and entered the same upon the assessment and tax rolls of said defendant City as personal property as provided by Statute.

13. It admits that on the 28th day of February and while said taxes were on the tax roll for the city of Hartford against the shares of stock assessed against the different individual owners of said stock, the plaintiff paid said tax under protest to the city treasurer of the city of Hartford and the amount so paid being the sum of Twenty Eight Hundred Fifty-nine and 30/100 Dollars.

[fol. 46] 14. It admits that on the 27th day of January, 1923, the plaintiff filed its claim in writing, which was duly sworn to,

against said defendant city for the amount of the tax so paid by it under protest and interest on same from the 28th day of February, 1922, and that a copy of said claim is annexed to the complaint, made a part thereof and that said city failed to allow said claim before the commencement of this action and that the action was brought within one year after the payment by the plaintiff of said tax under protest as aforesaid.

15. This defendant further answering denies each and every allegation of said complaint not herein expressly admitted, qualified or explained.

Wherefore, defendant demands that the complaint be dismissed with costs.

J. C. Russell, City Attorney, Attorney for Defendant.

Duly sworn to by J. H. G. Lieven. Jurat omitted in printing.

[fols. 47 & 48]

EXHIBIT "A."

Notice

Monday, July 4th, being a holiday the Board of Review of the city of Hartford will be in session in the city hall on Tuesday, July 5th, at 9 o'clock a. m. for the purpose of reviewing the assessment roll and hear all objections that may be presented and make such corrections as they in their judgment see proper.

Dated June 23rd, 1921.

Wm. Radke, City Clerk.

[fol. 49] IN CIRCUIT COURT OF WASHINGTON COUNTY

[Title omitted]

MINUTE ENTRY OF JUDGMENT

This action coming on before the Court, a jury having been waived, and after hearing arguments of counsel and after due consideration the Court is of the opinion and so decides that the tax imposed by the Defendant against the Plaintiff was and is illegal and void from its inception.

That Statute Sec. 70.47, Subsec. 6 does not apply and that the Plaintiff is entitled to judgment as demanded in its complaint.

By the Court.

C. M. Davison, Circuit Judge.

[fol. 50]

[File endorsements omitted]

IN CIRCUIT COURT OF WASHINGTON COUNTY

[Title omitted]

FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed in Circuit Court Feb. 6, 1924; in Supreme Court July 12, 1924

The above cause being upon the calendar for the October, 1923 term of said court for trial, and the plaintiff upon the call of the calendar having duly moved the court to transfer said cause to the court calendar for trial by the court without a jury, and the parties thereupon consenting in open court to the trial thereof by the court without a jury, and said cause having been duly tried to the court and submitted, E. W. Sawyer as attorney, and Miller, Mack and Fairchild as counsel, appearing for the plaintiff, and J. C. Russell, Esq. appearing for the defendant, and after listening to the evidence, arguments of the counsel for the respective parties, and having duly considered said matter, the court hereby makes and finds the following Findings of Fact and Conclusions of Law, to-wit:

Findings of Fact

I

That the plaintiff is, and at the times herein stated was, a National banking corporation engaged in the banking business at Hartford, Wisconsin, with a paid up capital stock of Fifty Thousand Dollars (\$50,000) consisting of five hundred (500) shares of the par value of One Hundred Dollars (\$100) each, all owned by various stockholders of said Bank.

II

That the defendant is a city of the fourth class, operating under [fol. 51] the general charter law of this state.

III

That during the year 1921 the taxing officers of the defendant city of Hartford, in form assessed and levied a personal property tax for such year on all of the said shares of stock of the plaintiff bank, at the then prevailing tax rate in the assessment district in which the said bank is located, to-wit, at the rate of Three and One Hundred Seventy-seven thousands Dollars (\$3.177) on each One Hundred Dollars (\$100) of the assessed valuation of such stock, which tax on the whole of said stock amounted to Two Thousand Eight Hundred Fifty-Nine and 30/100 Dollars (\$2,859.30). That such taxes were entered upon the tax roll of the defendant city for said year and in due time the tax roll for said year with the taxes

so in form against said shares of stock, spread thereon, and the warrant for the collection thereof, were placed in the hands of the city treasurer of said city for the collection of said taxes.

IV

That said taxing officers of said defendant city did not make any assessment against, or levy any tax for said year, 1921, upon any moneys or moneyed capital in the hands of any individual citizens of said city or against any debts due or to become due to such individual citizens or against any interest bearing bonds or against any shares of stock in the hands of any of such citizens, in any corporations except banking corporations, but suffered and permitted the same and the whole thereof to be and remain entirely free from assessment, and exempt from taxation for said year, in accordance with the provisions of sub-section 10 of section 70.11 of the Wisconsin statutes.

V

That during the year 1921 there was a very large amount of [fol. 52] moneyed capital in the hands of individual citizens of said city of Hartford, running into many hundreds of thousands of dollars, that was neither assessed for taxation nor taxed, which entered into competition with the banking business, including the banking business of the plaintiff.

That during said year, 1921, there were vast amounts of moneyed capital in the hands of individual citizens of this state, running into millions of dollars that entered into competition with the banking business, that under the provisions of said section 70.11 sub-section 10, were wholly exempted from taxation.

That as a result thereof, the shares of stock of said plaintiff bank as well as the shares of stock of other national banking corporations doing business in this state, were taxed or attempted to be taxed at a much greater rate than other moneyed capital in the hands of individual citizens of said city and state, that entered into competition with the banking business, including the banking business of the plaintiff; and the taxation of said shares of stock in said banks, including the plaintiff bank, and the exemption of said amounts of moneyed capital in the hands of individual citizens entering into competition with the banking business, resulted in an unjust, illegal and discriminating tax against said bank's shares.

VI

That on February 28, 1922, and while said tax roll and warrant with said taxes in form against the shares of said plaintiff bank so spread thereon, were in the hands of the treasurer of said city for collection of taxes, the said plaintiff in behalf of its stockholders, as well as in its own behalf and interest, paid said tax under protest to the city treasurer of said city, in the sum of Two Thousand Eight

Hundred Fifty-nine and 30/100 Dollars (\$2,859.30). That at the time plaintiff so paid said tax it accompanied the payment with [fol. 53] and said city accepted the same, under a written protest then lodged with said city, stating among other things, that said taxes were unjust, discriminatory and illegally exacted in violation of the federal and state constitutions under menace of compulsion and unjust and oppressive penalties, and further stating that the city treasurer to whom the check for such taxes was given, was authorized to cash the same, only, as an alternative to the resort to distress or other means provided by law for the enforcement of unpaid taxes; that said bank claimed the right and would seek all available means for the recovery of such taxes.

VII

That on January 27, 1923, the plaintiff in behalf of itself and its said stockholders, filed with the city clerk of said city, its verified claim in writing against said city for the refund and repayment of the amount of said taxes and interest, a copy of which claim is annexed to the complaint herein.

That on the 16th day of February, 1923, the Common Council of said defendant city, upon consideration of said claim, affirmatively disallowed the same.

Conclusions of Law

I

The tax so in form levied and assessed against said shares of stock was unauthorized, illegal and void in its inception, and in violation of, and repugnant to, the provisions of section 5219 of the Statutes of the United States pertaining thereto; and the taxing officers of the defendant city were without power or authority to assess the said shares for taxation or to levy any tax against the same.

[fols. 54-71]

II

That subsection 6 of section 70.47 of the Wisconsin Statutes does not apply to this case. That the payment by plaintiff of said taxes to said city was not a voluntary payment but under such protest as was sufficient to entitle and permit the plaintiff to recover the same herein.

The plaintiff is entitled to judgment against the defendant as demanded in the complaint.

Let judgment be entered accordingly.

Dated February 2nd, A. D. 1924.

By the Court:

C. M. Davison, Circuit Judge.

[fols. 72 & 73] [File endorsements omitted]

IN CIRCUIT COURT OF WASHINGTON COUNTY

[Title omitted]

JUDGMENT—Filed in Circuit Court Feb. 6, 1924; in Supreme Court July 12, 1924

The above cause being on the calendar for the October, 1923 term of said court, came duly on for trial by the court without a jury, said cause upon plaintiff's motion and the consent of the defendant thereto in open court, having been duly transferred to the court calendar for trial by the court without a jury, and said cause having been duly tried to the court and submitted, E. W. Sawyer as attorney, and Miller, Mack & Fairchild as counsel, appearing for the plaintiff, and J. C. Russel, Esq., appearing for the defendant; and the court, after hearing the evidence and arguments of counsel for the respective parties, having duly made and filed its Findings of fact and Conclusions of Law herein, and ordered judgment to be entered in favor of the plaintiff and against the defendant City of Hartford, as demanded in the complaint:

Now, therefore, on motion of plaintiff's attorneys, it is hereby Ordered, Adjudged and Determined that the plaintiff First National Bank of Hartford, Wisconsin, do have and recover of the defendant City of Hartford, the sum of Three Thousand One Hundred Ninety and 84/100 Dollars (\$3,190.84) damages, together with its costs and disbursements of this action taxed at the sum of One Hundred Thirteen and 50/100 Dollars.

Dated February 7, 1924.

By the Court:

John H. Klessig, Clerk.

[fols. 74 & 75] [File endorsements omitted]

[fol. 76] IN CIRCUIT COURT OF WASHINGTON COUNTY

[Title omitted]

Bill of Exceptions—Filed in Circuit Court July 7, 1924; in Supreme Court July 12, 1924

APPEARANCES OF COUNSEL

Case called for trial this 6th day of November, 1923.

Appearing: Plaintiff by E. W. Sawyer, its attorney, and Miller, Mack & Fairchild as counsel. Appearing, The defendant, City of Hartford, by John C. Russell, its attorney.

Case tried before the Hon. C. M. Davison, Circuit Judge, without a jury as follows:

Examination by Mr. E. W. Sawyer:

I call Mr. JACOB HAHN, an officer of the city of Hartford, for examination under the provisions of Section 4068 of the Statutes. Mr. Jacob Hahn sworn.

Mr. John C. Russell: 1. I object to the introduction of any evidence under the complaint for the reason that the Court has no jurisdiction of the subject matter of the action. 2. Because the complaint does not state facts sufficient to constitute a cause of action.

Court: Demurrer on both grounds overruled for the present.

[fol. 77] Q. Where do you live?

A. City of Hartford.

Q. Did you live there in 1921?

A. Yes.

Q. Were you an officer of the city of Hartford in 1921?

A. City Assessor.

Q. Have you in your possession the assessment book of the real and personal property assessed in the city of Hartford for the year 1921?

A. Yes.

Q. Will you produce that book?

Marked "Plaintiff's Exhibit No. 1."

Q. I show you Plaintiff's Exhibit No. 1 and ask you if that is such book?

A. Yes.

Q. Does that book contain the assessment made against the shares of stock in the First National Bank, City of Hartford, for the year 1921?

A. Yes.

Q. Will you turn to the pages where that assessment appears?

Q. Does that assessment appear upon one page or on several pages of this book?

A. I think on two pages. The right hand page and the back of it. Page 187.

Q. Is the left hand page opposite that marked as a page?

A. No.

Q. I ask for the purpose of identification that that page be marked 186½.

Page marked "186½."

Q. The assessment against the starcholders appears upon pages 186½ and 187.

A. No.

[fol. 78] Q. On what pages does the assessment against the shareholders of the First National Bank appear in this book?

A. On 186½ and 187.

Q. What number of shares were assessed?

A. 500.

Q. What was the total assessed value on the stock?

A. \$107,000.00.

Q. Did the First National Bank of Hartford, Wisconsin, in 1921, own any real estate?

A. Yes.

Q. In the City of Hartford?

A. Yes.

Q. Did it conduct the banking business that year in the real estate which it owned?

A. Yes.

Q. What is the real estate assessed at?

A. \$17,000.00.

Q. Leaving the balance of the amount of assessment against the shares of stock at what figure?

A. \$90,000.00.

Q. What was the assessed valuation per share of stock as appears from that book?

A. \$125.00 per share.

Q. Look your book over again and see if you are not mistaken in respect to the amount at which each share of stock was assessed?

A. \$180.00. That is right.

Q. You wish to correct your mistake in that regard?

A. Yes.

Q. Against whom were the shares of stock assessed?

A. The stockholders of the bank. The First National Bank.

Q. Get your book out and tell me against whom the shares of stock were assessed? Against individuals or against the bank?

A. Against the bank.

[fol. 79] Q. Don't the names of the individual shareholders appear, and isn't the assessment against them individually?

A. Yes.

Q. Why do you say then that the shares of stock were assessed against the bank?

A. Do you want me to read—

Q. Now, were the shares of stock assessed against the individual who owned the stock, and not against the bank as a bank?

A. No, sir.

Q. Was this stock assessed separate from personal property assessable against individuals residing in the city of Hartford?

A. Separate.

Q. From other personal property against the individuals owning stock?

A. I assessed the way Mr. Guth told me.

Q. Were not these shares of stock assessed individually?

A. Yes, sir.

Q. In making the assessment that year against individuals residing in the city of Hartford, did you assess money capital?

A. How do you mean?

Q. Did you assess money in the hands of individuals?

A. No, sir.

Q. Notes, mortgages, interest bearing bonds?

A. No.

Q. Debts that might have been owing to individuals residing in the city of Hartford?

A. No.

Q. In that respect you followed the statutory provisions of this state as you understood it?

A. Yes.

Q. Do you know what the tax rate in the city of Hartford was for that year—1921?

[fol. 80] A. I don't think I know. For 1921?

Q. Yes.

Mr. J. C. Russell: You will find it in the eighth paragraph of the answer.

Mr. E. W. Sawyer: \$3.17 and seven mills on each \$100.00 of valuation.

Q. Showing you again Page 186½ of this Exhibit No. 1, what does the total amount of the personal property assessed up against the shareholders upon the shares of stock in the First National Bank for the year 1921, come to?

A. \$285,930.00.

Q. Give the figures if you can't read them correctly? Give your statement as to what your tax is in the place that it appears in that books?

A. I don't think I can explain it. I think the City Clerk can explain it better than the Assessor.

Q. What is the amount of these figures?

A. \$2,859.30.

Q. Do all the stockholders appearing upon these pages of this book live in the City of Hartford, if you know?

A. I can't tell, but if I look it over I'll know.

Q. Well, now here, I think we made a mistake on this thing, regarding the pages upon which the shares of stock for the First National Bank is listed?

A. Yes, I said before——

Q. Page 187 contains the assessment made against the Hartford Exchange Bank.

A. Yes, Page 187 is the assessment against the Hartford Exchange Bank.

Q. Yes. And it does not contain the assessment made against the shareholders in the First National Bank?

A. No.

Q. That was a mistake in reference to that page?

A. Yes.

[fol. 81] Q. The pages upon which the assessment against the stockholders in the First National Bank appearing in this book are Pages 186 and 186½. The very first stockholder upon this page is who?

A. On Page 186, H. A. Butterfield, Los Angeles, California.

Q. And he is assessed upon how many shares?

A. 40.

Q. The number of shares testified to against which assessments were made, 500 is right, isn't it?

A. I was told so by Mr. Liver.

Q. As far as you know it is right?

A. Yes.

Q. And the assessed valuation per share at \$180.00 is correct?

A. Well, I think so.

Q. Look in the book, don't think. Be sure. That is what you assessed it at?

A. Yes.

Q. And the total amount of this stock share assessment as testified to is \$2,859.30? Applying to this First National Bank stock.

Court: He testified to that before.

Q. What do you do with that assessment roll after you finish making the assessment?

A. After the Board of Review meets I am done with it, and I leave the book with the clerk in the office and then I am done.

That is all, Mr. Hahn.

Mr. WILLIAM RADKE called and sworn.

Examination by Mr. E. W. Sawyer:

Q. Where do you live Mr. Radke?

A. City of Hartford.

Q. Are you an official of the city of Hartford?

A. Yes.

Q. What?

A. City Clerk.

[fol. 82] Q. Were you such City Clerk in 1921?

A. Yes.

Q. I show you Plaintiff's Exhibit No. 1, being Assessment Roll of the City of Hartford for that year and ask you if the assessment against the property in the city of Hartford as it appears upon this assessment book for the year 1921, was the basis upon which the tax for that year was levied?

A. Yes, sir.

That is all.

Mr. JOHN G. LIVER called and sworn.

Examination by Mr. E. W. Sawyer:

Q. Mr. Liver, where do you live?

A. I live at Hartford, Wisconsin.

Q. How long have you lived in Hartford, Wisconsin?

A. 51 years.

Q. In what business are you presently engaged?

A. In the banking business.

Q. What bank are you connected with?

A. First National Bank.

Q. How long have you been connected with the First National Bank, of Hartford, Wisconsin?

A. 17 years.

Q. Do you hold an official position in that bank?

A. Yes, sir.

Q. What is it?

A. President.

Q. How long have you been President of that bank?

A. Well ever since its existence.

Q. Well how long is that?

A. 17 years.

Q. Have you been an official of any territorial group of the Wisconsin Bankers' Association?

[fol. 83] A. Yes, I was for two years President of Group Five of the Wisconsin Bankers' Association.

Q. Presently Mr. Liver, what districts does Group Five include?

A. That includes the following counties: Dodge, Washington, Waukesha, Walworth and Rock.

Q. Prior to the time that you were engaged in the banking business with the First National Bank, in what business were you engaged?

A. General Merchandise.

Objected to.

Objection overruled.

Q. Where?

A. At Hartford.

Q. And how long had you been in the merchandise business at Hartford?

A. 32 or 33 years.

Q. Has your experience in the merchandise business familiarized you with the conditions in Hartford and surrounding territory?

A. Yes.

Q. What is the population of the city of Hartford?

A. About 4,500 I think.

Q. Does your bank with which you are connected confine its business to the city of Hartford alone?

A. No.

Q. What territory contributory thereto, and what is the nature of the territory tributary to Hartford? What is it used for? What is the territory used for that lies on the South side of Hartford?

A. Farming community.

Q. What kind of farming community is it?

A. Quite prosperous farming community.

[fol. 84] Q. What are the financial conditions?

A. Quite good.

Q. When farmers living around Hartford retire, where do many of them move to?

A. To Hartford.

Q. Are there a considerable number of retired farmers living in Hartford?

A. Quite a number.

Q. And were there in 1921?

A. Oh, yes.

Q. What are the ordinary principal functions of the banking business as conducted by the First National Bank of Hartford?

A. Well, we receive deposits in several ways, and of course loan money to individuals and corporations, we have a savings box department in our bank, we borrow and sell exchange, and other business that may come before a bank—we are there to do that work.

Q. Does the First National Bank of Hartford confine its business operations and functions to the city, or territory tributary thereto?

A. The city and surrounding territory.

Q. Does your bank engage in the business of buying and selling government bonds?

A. Oh, yes.

Q. Notes and mortgages?

A. Yes.

Q. Securities:

A. Yes.

Q. And did it do so in 1921?

A. Yes.

[fol. 85] Q. In addition to discounting commercial paper?

A. Yes.

Q. To what extent or what is the practice of the First National Bank in respect to handling mortgages and notes?

A. We don't handle so many mortgages. We loan on mortgages, and we may buy mortgages, but that is not very largely a part of our business. I had in mind securities of organizations like Wisconsin Farm Loan Association. Of course we buy those bonds.

Q. Do you buy them to keep?

A. Well for our own investment and to accommodate our clients with them.

Q. What has been your practice in respect to disposing of them to clients.

A. Well we dispose of quite a good many.

Q. To whom or how did you dispose of them? To corporations or individuals?

A. Individuals.

Q. Are there any other individuals in the city of Hartford that were engaged in selling notes and mortgages and securities?

A. Yes, sir.

Objected to.

Objection overruled.

Mr. Russell: I ask that all of this line of testimony be received under objection.

By the Court: It may be so noted, and all testimony offered under that line will be received under objection.

Q. And were they so engaged in 1921 and prior thereto?

A. Yes.

Q. Can you name some of those individuals? Or concerns?

A. I can.

Q. Give the Court a statement of a few?

A. Mr. Ed. Russell.

Q. How long had Mr. Ed. Russell approximately been in that line of work in Hartford?

A. I should judge about eight or ten years.

Q. He is a brother to J. C. Russell, the attorney for the plaintiff.

A. Yes, sir.

[fol. 86] Q. Do you know whether he has conducted his business, or whether his business was conducted in a large or small way?

A. Quite extensively.

Q. What other individuals were engaged in the loan business?

A. Charles Sayles.

Q. Where does he reside?

A. At Hartford.

Q. Is there any other concern that is engaged in loaning out money in the city of Hartford?

A. Well there is Mr. Thoma.

Q. Any other association or concern?

A. Yes, the Hartford Building and Loan Association loans money.

Q. Do you know whether any of the real estate firms in that city are engaged in loaning out money to individuals in that community?

A. Yes.

Q. What firms notably?

A. Sauerhering & Gehl make loans on real estate.

Q. You have personal knowledge of that?

A. Yes.

Q. How long have they been in that business, approximately?

A. Well they have been in that business 12 or 15 years I think.

Q. Do you know to what extent, are the loans that are made through these various concerns, to what amounts they run?

A. Why, yes, I have no exact knowledge, but I have heard the report.

Objected to.

Objection overruled.

Q. Don't you know from your knowledge of business circumstances?

A. Well, a large amount.

Q. What do you mean by large amount? Over a million dollars annually?

A. I won't say that. The amount that these concerns had loaned [fol. 87] out to individuals, I should estimate that about \$250,000.00 or \$300,000.00, or may be more than that.

Q. Was that true in 1921?

A. Yes.

Q. In what way Mr. Liever, does this loaning business by these concerns compete with the business of the bank?

A. These loaning concerns compete with the business of the bank in that respect—the same as other banks would be in competition.

Q. Show how the competition affects the banking business and in what way? From what funds do you realize or make your loans?

A. From the bank funds, whatever money we have on hand.

Q. And if the money is withdrawn it affects your loaning department?

A. Certainly.

Q. Are these withdrawals up to and including 1921 substantial in amount?

A. Yes.

Q. Do you know of that personally?

A. Yes, sir.

Q. Are there many withdrawals being made that you have personal knowledge of?

A. Yes.

Q. And how would that compete in amount to what is invested in the capital stock of the First National Bank?

A. It would be a great deal larger amount.

Q. Do you know of other concerns that are engaged in buying and selling securities, mortgages, notes and bonds in that community outside of these local concerns?

A. Yes.

Q. What concerns are they and where are they located?

A. In Milwaukee and Chicago.

Q. What means do they employ in order to place their mortgages and securities on the market?

[fol. 88] A. They come right out to the city and solicit.

Q. What do they do in the way of circularizing?

A. They circularize when they issue the bonds.

Q. Can you name various concerns in Milwaukee that are so engaged? Give some of them that come to your city?

A. First Wisconsin Company of Milwaukee, Morris Fox & Co., Edgar Ricker & Co., Grossman, Lewis & Company, Best & Gregg Co.

Q. And do they cover territory outside of the city of Hartford?

A. Oh, yes.

Q. Now what is the general nature of the securities which they offer?

A. Bonds, notes and mortgages, stocks.

Q. What type of bonds—what kind?

A. Real Estate bonds and utility bonds. Well they offer for sale all kinds of bonds.

Q. What kind of bonds? Tell the Court what for?

A. Bonds on buildings, bonds on farms.

Q. What do they call city bonds ordinarily?

A. Municipal bonds.

Q. Are those bond issues confined to the State of Wisconsin? Or by concerns outside—non-local.

A. Yes.

Q. What is the effect upon the banking business when non-local bonds are sold in the community?

A. Well when the bonds are offered for sale, people draw out their money and buy the bonds.

Q. Where do they draw the money from?

A. Well from savings account and some time certificates.

Q. And the affect of the sales of these bonds and securities is what upon the banking business?

A. It reduces the deposits.

Q. When does that, if ever, get back into the bank?

[fol. 89] A. I don't know if it ever gets back in some instances.

Q. How are the savings accounts built up? What is the process? Slow or rapid?

A. Slow.

Q. You may state whether or not these so-called bond houses sell their bonds and securities in the banking district tributary to Hartford in substantially large quantities?

A. Yes, quite so.

Q. You spoke about the Hartford Building and Loan Association. Did I understand you to say that that was a concern engaged in loaning money?

A. Yes, sir.

Q. Do you know approximately how long they have been in business in the city of Hartford?

A. Eight or ten years.

Q. And in what way does the business that they do compete with the banking business?

A. Well that competes with the banking business the same as the banks do. They receive deposits and make loans.

Q. You mean they take in money?

A. Yes.

Q. Do you know whether it has been their prevailing practice to pay interest upon money they receive?

A. Yes.

Q. What rate?

A. Five per cent.

Q. What are the prevailing rates that the banks pay on their deposits?

A. Three per cent.

Q. What is the effect upon the banking business as far as the Hartford Building & Loan Association is concerned?

A. Well when people know they can get five per cent they prefer to take it there instead of to us.

Q. You have personal knowledge of that?

A. Yes.

[fol. 90] Q. Was that true in 1921?

A. Yes.

Q. In what kind of an account do the merchants and manufacturers put their bulk of their account?

A. In checking account.

Q. Is there a considerable amount carried in certificates of deposit?

A. No.

Q. The certificate of deposit account—a large amount of that is held by whom?

A. Well from retired farmers.

Q. And it is very largely held by individuals?

A. Pretty much of it.

Q. Mr. Liever, do you know from your experience as a banker and from your official connection as President of Group Five of the Wisconsin Bankers' Association, how the situation as you testified to at Hartford compares with the situation in banks generally.

Objected to.

Objection overruled.

A. The situation is the same. The amounts in some localities are very large of course.

Q. I mean the general effect upon competing banking business or upon the way in which money capital competes with the banking business?

A. The effect is about the same all over.

Q. You have attended a great many bank conventions?

A. Yes.

Q. You are familiar with the banking situation in Wisconsin?

A. Yes.

Q. Do you know of a concern operating in this city known as the Ziegler Company?

A. Yes.

[fol. 91] Q. Where is its home office?

A. In West Bend.

Q. In what line of business is it engaged?

A. Real estate and loan business.

Q. Does it do a large amount of loan business in this city?

A. Quite so.

Q. Has it an agency or representative in Hartford?

A. Yes, sir.

Q. How do they push their business?

A. They circularize their loans, solicit in many ways.

Q. Do you know personally of large loans that they have made to individuals in the City of Hartford?

A. Yes, sir.

Q. Does it run up in the thousands of dollars?

A. Yes, sir.

Q. And the nature of their loaning business is relatively large or small?

A. Quite large.

Q. Now Mr. Liever, would the situation that you testified to in the way in which money capital held by individuals in Hartford in that community competes with the business of the National Bank, apply to 1921 as well as it does at the present time?

A. Yes, sir.

Q. There is no change in the situation as far as the years were concerned?

A. No, sir.

Q. Mr. Liever, do you know whether or not the taxes upon the

shares of stock, whether the year 1921 or 1922 have been compromised by various municipalities and banks, in which they are located?

A. Yes.

Objected to.

Objection overruled.

[fol. 92] Q. What situations do you know of that this is true?

A. I know they made settlement in Waukesha, Beaver Dam and Burlington. There was more than that, I know.

Q. Do you know what the situation was in that respect in Milwaukee?

A. I know they compromised in Milwaukee too.

Q. Do you know whether those compromises were made upon the advice of the Wisconsin Tax Commission?

A. That I don't know.

That is all.

Examination by Mr. J. C. Russell:

Q. When was your bank organized Mr. Liever?

A. 1907.

Q. What was the capital stock?

A. \$50,000.00.

Q. Does the bank own its building?

A. Yes.

Q. Does your bank occupy the entire bank building?

A. It occupies the first floor now.

Q. What did you occupy in 1921?

A. Part of the first floor, half of it.

Q. And it owned that bank building in 1921?

A. Yes.

Q. There was a few years that the bank did not own the whole building?

A. Yes, the Realty Company owned one-half of it.

Q. When did the First National Bank own the entire building?

A. In 1910.

Q. Approximately 13 years ago?

A. Yes.

Q. And what are the other parts of the building that are not occupied by the bank, used for?

A. We have two tenants upstairs, a doctor on one side and a real estate firm on the other.

[fol. 93] Q. What real estate firm?

A. Sauerhering & Gehl.

Q. And I believe Dr. Sachse?

A. Yes.

Q. Was that the condition in 1921?

A. Yes. We might have had some one in the office in the rear of that building at that time. I don't remember.

Q. What was the rent taken in from May 1, 1920 to 1921?

A. The rent amounted to \$1500.00 or \$1600.00 a year.

Q. How many people were employed as cashiers or tellers during the year between May 1, 1920 and May 1, 1921?

A. Six people.

Q. Can you give the names?

A. Mr. Rees, Radke, Loppnow, Mrs. Hetzel, Ralph Winterhalter and myself.

Q. Rees was the Cashier?

A. Yes.

Q. Loppnow was Assistant Cashier?

A. No, bookkeeper.

Q. And Radke?

A. He was Assistant Cashier.

Q. And was such in 1921?

A. Yes.

Q. And Mrs. Hetzel bookkeeper and Mr. Winterhalter, bookkeeper?

A. Yes.

Q. And you were President?

A. Yes.

Q. What salary did you receive as president?

A. \$3000.00 a year.

Q. Was that the salary you received in 1920 or 1921?

A. Yes.

[fol. 94] Q. What salary did Mr. Rees receive?

A. \$250.00 a month.

Q. Mr. Lotnow?

A. \$125.00 a month.

Q. What salary did Mr. Radke receive?

A. \$150.00 a month.

Q. Mrs. Hetzel?

A. I'm not quite sure but I think at that time \$90.00 a month I'm not positive about that.

Q. Mr. Winterhalter?

A. \$75.00 a month.

Q. Was there any other money paid to these employees during the year?

Objected to.

Objection overruled.

A. The bank distributed \$500,000 every year among the employees.

Q. That was the amount set aside for the year 1920 to 1921 and distributed between them?

A. Yes, sir.

Q. What surplus did you have on hand May 1, 1921?

A. \$50,000.00.

Q. That was the capital stock?

A. No, sir, I am not quite sure. I have the book there and I can tell. I think I am right though. Yes, \$50,000.00.

Q. What is the surplus usually used for?

A. We use that the same as any other money. Surplus is treated the same as capital stock.

Q. For loaning?

A. No, we don't loan out of the surplus.

Q. Now what were your individual profits in 1921.

A. I think \$3000.00.

Q. Will you refer to the book?

A. \$3,415.00.

[fol. 95] Q. Did your bank on May 1, 1921, own any securities that were exempt from taxation, such as government securities?

A. Yes.

Q. Does your daily statement book show it?

A. Yes.

Q. What was the amount?

A. I don't know whether we had any that was exempt from taxation.

Q. Do you hold any municipal bonds?

A. Yes.

Q. How much did you hold at that time? Give me the amount?

A. I should say in the neighborhood of \$35,000.00 municipal bonds. Such as county and city.

Q. Did you hold government bonds?

A. Yes.

Q. That wasn't included in the municipal bonds?

A. No.

Q. How much government bonds did you hold?

A. \$60,000.00.

Q. Does your daily statement book show it?

A. It don't show that record. It don't show that separate.

Q. Have you any record that would show it?

A. Yes, at home, sure.

Q. You didn't bring them?

A. We were asked to bring—

Q. You were asked to bring all records and statements referring to this case. You will prepare a statement for me of that Mr. Liever I want to know how much money you had invested in non-taxable securities May, 1921.

Objected to.

Court: He don't need to prepare any statement.

Q. Will you produce your records here to-morrow?

A. Yes, sir. We can produce records, of course.

[fol. 96] Q. What rate of interest do these different bonds draw, or non-taxable securities?

A. Non-taxable securities bring now any where from 4½ up to 5% and some less than 4½%.

Q. Any 6%?

A. No, sir, no non-taxable bond.

Q. Was there any dividends paid by your bank from May 1, 1920 to 1921?

Objected to.

Objection overruled.

A. Yes.

Q. What dividend was paid upon the capital stock?

A. For that year?

Q. Yes.

A. 15%.

Q. Now, was business on the increase or decrease from May 1, 1920 to May 1, 1921?

A. We just about held our own.

Q. How did it compare with previous years?

A. Our business has changed materially the last five years.

Q. Now, what were your deposits on May 1, 1921?

A. \$955,000.00.

Q. What was the average daily deposit for the year from May 1, 1920 to May 1, 1921? The average daily deposit with your bank?

A. I can't say.

Q. Does your daily statement book show that?

A. We would have to figure that out.

Q. How much of that was on open deposit?

A. You mean subject to check, is that what you mean? That average would be in the neighborhood of one-third of the whole money deposited in the bank.

[fol. 97] Q. Would your daily statement book show that?

A. It varies every day. It is about one-third, some time a little more and some time a little less.

Q. One-third would be subject to check?

A. That is not exact.

Q. Your deposits that were subject to check didn't draw interest?

A. No.

Q. How much did you have in certificates of deposit?

A. What date?

Q. On May 1, 1921?

A. Certificate of Deposit on that day, \$322,000.00.

Q. Then you had about \$318,000.00 of open deposits and \$322,000.00 in certificates? Now where was the balance of your deposits at that time?

A. \$249,000.00 in savings.

Q. And your checks on deposits on that day were \$384,000, that makes your \$955,000.00 the first of May. What interest did you pay on the time certificates in 1921?

A. 4%.

Q. On savings account?

A. 4%. Some time during 1921 we were paying 4%. I would have to look at the record for that.

Q. How much interest money did your bank pay out from May 1, 1920 to May 1, 1921?

A. I can't give you that exactly here.

Q. Will you prepare it for me?

A. Yes.

Q. Now was there any sales of stock between May 1, 1920 and May 1, 1921?

A. One transaction—one transfer, Mr. Otto Wollner.

Q. Do you know what the stock sold for?

A. No.

[fol. 98] Q. And previous to that were there any sales of stock for two or three years?

A. No.

Q. Stock can't be bought?

A. Sure it could be bought by paying the price.

Q. You pay the price for anything you buy don't you?

A. Yes.

Q. Now since May 1, 1921, has there been any sales of stock?

A. Yes.

Q. Who sold their stock?

A. Westphal.

Q. Do you know what he sold his stock for?

Objected to.

Objection overruled.

Q. What did Mr. Westphal sell his stock for?

A. For \$225.00.

Q. And the rest of it?

A. I am not quite sure.

Q. He sold it for \$250.00 didn't he?

A. He may have sold some for \$250.00.

Q. When was that?

A. In the last year.

Q. 1922.

A. No, the most of it in 1923.

Q. Now for the year 1921 was there anything charged off for depreciation bonds, notes and securities?

A. I think there was.

Q. How much?

A. In the neighborhood of \$5,000.00 or \$6,000.00, if I remember rightly.

Q. Would your daily statement book show that?

A. No.

Q. What was done with that \$6,000.00 charged off?

A. Struck off from the undivided profits?

[fol. 99] Q. Was that amount actually expended for anything?

A. I think I am off on the \$6,000.00, but whatever it was it was charged off.

Q. Was there any loss on bonds in 1920 to 1921?

A. I don't think there was.

Q. You would remember?

A. Yes.

Q. That \$6,000.00 was allowed for that purpose.

A. It was credited back when it was used for that purpose.

Q. There was \$6,000.00 charged for losses on poor stock, bonds and securities.

A. Yes.

Q. There was no losses on bonds and notes during that year?

A. That was the shortage on the bonds that was charged off.

Q. Was there any loss on bonds or notes? Was there any loss, shortage in value?

A. Yes.

Q. How do you account for that shortage?

A. Depreciation. They depreciated in market value.

Q. What do you mean?

A. Well some bonds in the market brought five per cent and others seven and one-half.

Q. They were held by the bank?

A. I don't know that we had any.

Q. Did you charge off according to market value or according to actual depreciation on bonds and notes held by the bank.

Q. You charged off according to market value?

A. Yes.

Q. Did you dispose of any of those bonds or notes at a loss?

A. One.

Q. How much?

A. \$100.00 or \$150.00.

Q. That was practically the only loss you had that year?

A. That was the only one that was a real loss at that time.

[fol. 100] Q. Now how does your fixtures and your equipment compare in May 1921 with the time the bank was organized. Have you put in any?

A. Yes some, and some were taken out.

Q. How do they compare as far as value is concerned? What was the book value of your furniture and fixtures at the time the bank was organized?

Objected to.

Objection overruled.

A. I think \$2,000.00.

Q. Does your record show it?

A. Yes.

Q. What was the book value of your furniture and fixtures on May 1, 1921?

A. It didn't change any. \$2,000.00.

Q. Your daily statement book shows that?

A. No, we carry them with the capital stock, don't you see. We carried them for \$2,000.00 right along.

Q. Now in 1921, did you- bank either by agent or attorney or personally appear before the Board of Review in the city of Hartford?

A. I am sure we did not.

Q. Now in the City of Hartford, there are several other taxing units, are there not Mr. Liver? They levy taxes besides the city of Hartford?

A. There is a high school in the city of Hartford that is a taxing unit.

Q. Now there is also the south side school district?

A. Yes.

Q. That consists of what?

A. Joint district.

Q. With the town of Hartford?

A. Yes.

[fol. 101] Q. That consists of the First and Fourth Wards of the city of Hartford and a part of the Town of Hartford?

A. Yes.

Q. And that is a separate taxing unit, isn't it?

A. Yes. I don't really know how that operates. They levy their own tax at the annual meeting.

Q. Now in 1921, some time after May 1, didn't you hand Mr. Hahn a statement of the stock, or number of shares held by them in the First National Bank?

A. Not after May 1.

Q. Before?

A. Yes.

Q. You paid your tax in 1922 that were assessed in 1921, didn't you?

A. Yes.

Q. And what was that amount?

A. I don't know just now.

Q. It was \$2,859.30?

A. I think so.

Q. Did the City of Hartford make any demand on the First National Bank to pay that tax of \$2,859.30, either in person or by agent?

Objected to.

Objection overruled.

A. The 1921 taxes were paid.

Q. Was any demand made by any official of the city of Hartford that the bank pay that tax?

A. I don't think so.

Q. You simply went there and paid your tax under protest?

A. I think that is right.

Q. Do you know?

A. Yes.

[fol. 102] A. We paid the tax.

Q. No official or no agent of the city of Hartford ever demanded the payment of that tax? You simply went there and paid your tax there under protest.

A. We had protested before and paid the tax.

Q. When had your protested?

A. I don't know when.

Q. You hadn't protested as a matter of fact?

Objected to.

Objection overruled.

Q. You simply went down there and paid your tax under protest and got their receipt?

A. We had protested before.

Q. Before 1921?

A. I don't know how that was, we paid one under protest, that I know.

Q. That was in 1922?

A. May be so.

Q. At the time you paid your taxes for 1921? Is that right?

A. We protested. We put in our protest at the time we paid them.

Q. You paid them under protest?

A. Yes.

Q. Have the deposits of \$955,000.00, the same as you testified here, any value as a going asset in your bank business?

A. It has a value to somebody.

Q. Has it to the bank?

A. I think it has.

Q. What would you say was the reasonable value of a deposit of \$955,000.00 May 1, 1920?

A. That would depend on conditions a good deal.

Q. You are a banker, aren't you?

A. Yes.

Q. You have had considerable experience, haven't you?

A. Yes.

[fol. 103] Q. And you have attended Bankers' Associations and Conventions?

A. Yes.

Q. Well what would you say was a reasonable value on the \$955,000.00?

A. I would say \$955,000.00 as an asset. I wouldn't state any value on that.

Q. Have you any idea?

A. No.

Q. Was it worth \$25,000.00 as an asset? Was it worth \$50,000.00?

A. I don't know.

Q. Now what was the par value of the shares of stock of the First National Bank?

A. \$100.00 a share.

Q. That was the par value in 1921?

A. Yes, sir.

Q. How much did you take in from May 1, 1920 to May 1, 1921, as box rent?

A. I don't know. I haven't got that with me.

Q. Did you have saving deposit boxes in that bank in 1920 and 1921?

A. Yes.

Q. Now you rent those boxes out?

A. Yes we do.

Q. Now what was the amount of rent you took in for these rented boxes from May 1, 1920 to 1921?

A. I don't know.

Objected to.

Objection overruled.

Q. Haven't you any idea?

A. In the neighborhood of \$400.00 or \$450.00.

Q. Now you stated that Sauerhering & Gehl are in the loaning business? And the fact that they make loans causes losses from your bank, does it not?

A. Yes.

Q. Is Mr. Sauerhering a stockholder in your bank?

A. Yes, sir.

Q. Where does he do his banking business?

A. I think with us.

[fol. 104] Q. Now Mr. Sauerhering and Mr. Gehl and Mr. Sayles and Mr. Thoma, they do business many miles from Hartford, and they bring in money outside of the area of the business outside of the First National Bank, do they not?

A. I don't think so.

Q. Now, this million dollars that you testified to, how much of that came out of the First National Bank?

A. I don't know.

Q. \$100,000.00?

A. I shouldn't wonder, or more. More than that among the parties you mentioned.

Q. Now does Sauerhering & Gehl or Ed. Russel or Thoma, have they savings accounts?

A. With us?

Q. Yes.

A. They receive money.

Q. What do you mean by that?

A. Well they receive money from their clients and put it in the bank or loan it to somebody else.

Q. Does Mr. Sayles deposit money in the bank?

A. Yes.

Q. The Building and Loan Association?

A. Yes.

Q. You do practically all their business?

A. Yes, we do some of it. There are lots of those concerns, like the Building and Loan Association that takes deposits and hold them as deposits. They take in money I know.

Q. They don't hold it on their person?

A. They may.

Q. Do they keep it in their office?

A. They may.

Q. Do you know?

A. I don't know what they do with it for the time being.

Q. Now, when you refer to this million dollars, did you say that there was a million dollars loaned in one year?

A. I don't say one year.

Q. How much did you say was loaned?

A. I think it was \$250,000 or \$225,000 a year.

[fol. 105] Q. Where were these loans principally made?

A. Western country.

Q. You claimed that they deteriorated the value of the stock in the First National Bank of Hartford?

A. I didn't make such claim.

Q. What was your object in stating that they were in competition in doing business?

A. Well I claim they are competition.

Q. Now did they at any time as long as they are in there in any way lessen the value of the stock of the First National Bank?

A. It certainly hasn't increased it. I haven't kept track of it.

Q. You testified they are in competition?

A. Certainly.

Q. What outside Companies, outside of this area, were doing business in the city of Hartford?

Court: He already named a number of them.

Q. You assisted them time and again?

A. No, sir, I have not.

Q. Didn't you sell bonds for them?

A. No, sir.

[fol. 106] Q. Didn't you handle bonds for them?

A. We handled our own bonds, bonds for ourselves.

Q. What do you mean?

A. Bonds that we buy for our own investment.

Q. You invest in bonds quite frequently?

A. Municipal bonds, yes.

Q. Do you purchase them direct or buy them through some bonding house?

A. Either place.

Q. Where have you ever bought any outside directly from the municipality?

A. Washington County bonds.

Q. How much did you buy?

A. \$15,000.00 or \$20,000.00 at one time.

Q. How much in May, 1921?

A. About \$7,000.00 or \$8,000.00.

Q. Don't you own about \$25,000.00 of Municipal bonds?

A. I told you about \$30,000.00 or \$35,000.00.

Q. Where you buy these bonds, are these some of the concerns that are in competition with you?

A. We buy some of their bonds.

Q. Is it your claim that some of these are in competition with you in the city of Hartford?

A. It might be so.

Q. When did you notice any withdrawals from the First National Bank by virtue of those concerns being in competition with the bank?

A. We have had that before us for the last ten or twelve years.

Q. That is true in all localities?

A. I don't know.

Q. Who is Morris Fox & Co.?

A. They are a bonding house in Milwaukee.

Q. Do you deal with them?

A. Never.

[fol. 107] Q. What about the First Wisconsin Company?

A. We have done business with them.

Q. Bought bonds?

A. We have.

Q. You testified that they are in competition with you at Hartford?

A. We buy Government Bonds from them.

Q. This is one of the Companies you claim is in competition with the bank of Hartford?

A. I don't think they come in competition with us.

Q. You named them in your direct examination as a concern that was in competition with you in your business at Hartford?

A. I said they were one of the concerns that was selling bonds at Milwaukee.

Q. And in competition with your bank at Hartford?

A. No, sir. I don't think so.

Q. They might be?

A. They could I suppose. I named them as one of the concerns selling bonds.

Q. In Milwaukee?

A. Yes.

Adjourned to 1.30 o'clock in the afternoon.

Q. Referring back to the year 1920 to 1921, do you know what the loan value was on the shares of stock of the First National Bank?

A. No, sir.

Q. Approximately?

A. No, sir. There was no loan value established.

Q. Now with a \$50,000.00 capital stock, \$50,000.00 surplus, \$3,415.00 of undivided profits and a deposit of \$955,000.00, what would you say was a fair price for the capital stock.

A. According to your figures there it would be about \$200.00.

Q. Wouldn't it reach \$250.00?

A. No, it would not.

Q. Could it be bought at that time for \$250.00?

A. I think so.

[fol. 108] Q. Do you know of anybody that would sell for that?

A. I have nobody in mind.

Q. Have you got the quarterly statements for April 28, 1921 and June 30, 1921?

A. Yes, sir.

Quarterly statement for April 28, 1921, marked "Defendant's Exhibit No. 1."

Q. I show you Defendant's Exhibit No. 1, Mr. Liever, what does that show your surplus on April 28, 1921?

A. Just \$50,000.00.

Q. What does it show your undivided profits to be?

A. \$15,318.06.

Q. What does that show your total deposits to be?

A. \$962,000.00.

Defendant's Exhibit No. 1 offered in evidence.

Court: Received.

Q. I show you here quarterly statement of June 30, 1921. What does that show your surplus?

A. \$50,000.00.

Q. And what were the undivided profits?

A. \$12,991.98.

Q. I Notice here, Reserved for interest and taxes accrued, \$35,604.63?

A. Well, this is just the undivided profits you see carried over here, less current expenses, interest and so on. Now here you see at one side our books show \$35,604.63, undivided profits, less reserved for interest, less current expenses, interest and taxes paid, \$22,612.65.

Q. That leaves your undivided profits at that time, \$12,991.98?

A. Yes.

Q. What is the amount of taxes paid between your quarterly statement of April 28, 1921 and this statement of June 30, 1921?

A. That might not affect taxes at all. It is current expenses and interest.

Q. Do you know what the interest was that was paid during that interval?

A. I can't say.

We offer this statement in evidence.

Court: Received.

[fol. 109] Q. Have you the report of the Comptroller of Currency for the years of 1921 and 1920?

Mr. Sawyer: Are those regular reports or are they part of our quarterly statements?

A. They are regular reports to the Comptroller of Currency taken from our records.

Statement marked "Defendant's Exhibit No. 3."

Q. I show you Defendant's Exhibit No. 3. What is that Mr. Liever?

A. That is the report of the First National Bank of Hartford to the Comptroller of Currency at the close of business on February 24, 1921.

Offered in evidence. Court: Received.

Statement marked "Defendant's Exhibit No. 4."

Q. I show you Defendant's Exhibit No. 4. What does that purport to be?

A. It is a report like the other one, Report to Comptroller of Currency as of Sept. 6, 1921.

Offered in evidence.

Court: Received.

Q. Is Mr. Andrew Esser a stockholder in your bank?

A. Yes, sir.

Q. And Mr. E. W. Sawyer?

A. Yes, sir.

Q. Did you attend the annual high school meeting for the year 1921?

Objected to.

Objection overruled.

A. I could not say, I don't know whether I did.

Q. Did you attend the District meeting for District No. 4

A. No, sir.

Q. Mr. Esser is the Treasurer of the High School?

A. He is.

Q. And was in 1921?

A. I think he was.

Q. And Mr. Sawyer the director?

A. I guess so.

That's all.

[fol. 110] Examination by Mr. E. W. Sawyer:

Q. If you did attend the meeting of the High School at the time referred to, did you attend in your capacity as a director or an official or stockholder of the bank? Did you attend as an officer of the bank or stockholder?

A. No, sir.

Q. Or as a member of the board of directors?

A. No, sir.

Q. In the event that a shortage is made on account of the loss sustained or a depreciation in securities, against what fund does that come out?

A. Undivided profits.

Q. At the time of the statement bearing date April, 1921, called the Defendant's first exhibit, wherein undivided profits are stated at approximately \$14,000.00 had interest then payable by the bank been charged off?

A. In April? No, sir, not interest. Not after January.

Q. When does the next charge off of interest come after Jan. 1 of that year?

A. June 31.

Q. What was the approximate book value of the shares of stock in the Plaintiff's bank in May, 1921? Had the interest then payable since the preceding January been charged off?

Objected to.

Objection overruled.

A. That statement there will show just about what the book value is. In the neighborhood of \$200.00 a share.

Q. Mr. Russell, have you got the original notice of protest that was made at the time of the payment of taxes in 1921?

A. I haven't got it. I think Mr. Radke has it.

Offered in evidence and marked "Plaintiff's Exhibit No. 2."

Court: Received.

Q. I show you Plaintiff's Exhibit No. 3, Mr. Liever, look at it and tell the Court what it is?

Marked "Plaintiff's Exhibit No. 3."

A. You want me to tell what it is?

Q. Yes.

A. This appears to be a tax receipt.

Q. For what year?

A. January 2, 1922.

[fol. 111] Q. Tax receipt for farm or personal property?

A. Personal property of the First National Bank of Hartford.

Q. Issued for what year? What taxes?

A. 1921 taxes.

Q. Paid when?

A. Jan. 2, 1922.

Q. Look at the date?

A. Paid Feb. 28, 1922.

Q. Was the check that accompanied that receipt cashed?

A. Yes, sir.

Q. By whom?

A. City Treasurer.

Offered in evidence.

Court: Received.

Q. I noticed that there is a difference in the amount shown on the notice of protest and the personal property receipt. What is that difference made up of?

A. The difference is in the real estate which our bank holds. Our bank building and property.

Q. You spoke about procuring some \$20,000.00 of Washington County bonds. What disposition has been made of those bonds?

A. Well we sold those bonds right at home. Mostly to our clients.

Q. Under what circumstances did you come to sell them?

A. Well our clients come in and inquire for investments and we show them what we have.

Q. How do you come to sell them?

A. Well in the same way, they inquire for investments and we tell them what we have.

Q. A matter of service to the people?

A. Yes. We think we give them pretty good investments.

Q. Mr. Russell, this morning, asked you the question as to what amount of municipal bonds the bank had and I believe you stated some \$30,000.00 on May, 1921?

A. I think it is about that amount?

Q. And those are carried as what? Asset or liabilities?

A. Assets.

[fol. 112] Q. Are they figured in with the amount of your undivided profits and surplus?

A. No.

Q. How do you determine them?

A. They are an asset just the same as the capital is?

Q. How do you determine the amount of your undivided profits are?

A. Anything that we have over capital and surplus.

Q. How do you arrive at that? In other words you take the liabilities and assets and the amount of assets exceeding the liabilities, constitutes the undivided profits?

A. Yes.

Q. In the event, Mr. Liever, that money for what, or for which loans to individuals had not been made and withdrawals from your bank, what effect would it have upon the loaning power of your bank?

A. In the event these loans had not been made and these funds not withdrawn, it would strengthen the loaning power.

Q. In the event they had not been withdrawn?

A. Yes, sir.

Examination by Mr. Russell:

Q. Did your bank engage at that time in the selling of mortgages?

A. Negotiate mortgages.

Q. Since then?

A. Yes, we have some times turned over mortgages to our clients.

Q. Negotiate any for the bank alone. Through the bank?

A. How do you mean?

Q. Why through the Hartford Building & Loan Association?

A. We have never handled any of their mortgages.

Q. Have you been interested in obtaining federal loans?

A. Yes, we made one federal loan about six months ago.

Q. Has your bank been in the business of selling mortgages of any description?

A. No we haven't been in the business, but we have taken mortgages and turned them over to our clients.

[fol. 113] Examination by Mr. Sawyer:

Q. Do you personally have any money out on interest bearing securities?

A. Why, I have a little.

Q. Approximately how much?

A. I might say \$10,000.00.

Q. What is the interest income from that?

A. Well that might average $5\frac{1}{2}\%$.

Q. Putting it at the outside figure?

A. Not over 6%.

Q. Bringing an income of how much?

A. \$600.00.

Q. And what is the maximum income tax that you have paid upon that interest income?

A. Why on an investment of \$10,000.00, my income tax, as near as I can say it now, would be about \$17.00 or \$18.00.

Q. And if you invested \$10,000.00 in the capital stock of the First National Bank of Hartford in 1921, what would have been your tax upon that investment?

A. My tax would have been approximately \$300.00.

That is all.

Mr. Russell:

Q. Is \$10,000.00 the actual amount you have out on interest?

A. About.

That is all.

[fol. 114] Mr. HUGH W. GROVE sworn.

Examination by Mr. Foley:

Q. Mr. Grove, you are a resident of Milwaukee, are you not?

A. Yes, sir.

Q. And you are employed by the First Wisconsin Company in that city?

A. Yes, sir.

Q. In what capacity?

A. As Treasurer.

Q. And what business does the First Wisconsin Company conduct?

A. Engaged in the underwriting, wholesaling and general distribution of bonds and investment securities.

Q. In general it is engaged in the so-called bond business?

A. Yes, sir.

Q. Will you state your experience in that business?

A. At least five years.

Q. Entirely with the First Wisconsin Company?

A. And its predecessor company.

Q. In 1921, what was the extent of the business of the First Wisconsin Company in the sale of bonds and other securities?

A. Many million dollars.

Q. Approximately \$100,000,000.00?

A. No, sir, not that large, less than \$100,000,000.00 and more than \$25,000,000.00.

Q. In what territory does the First Wisconsin Company sell its bonds?

A. In the State of Wisconsin and the upper peninsula of Michigan and occasionally outside of the State.

Q. Is a very large proportion of the bonds you sell sold in Wisconsin?

A. Yes, probably in excess of 90%.

Q. And are those bonds sold to individuals or corporations?

A. Both.

Q. Can you state the proportion?

A. Largely to individuals.

[fol. 115] Q. Can you state the average return on the securities, what the average return on the securities that you sell is?

A. Now?

Q. In 1921?

A. In 1921, on corporation securities the average return was probably 7%.

Q. What was the maximum return?

A. Well about 8%.

Q. About 8%?

A. Maximum, yes.

Q. And are there other firms and individuals engaged in the selling of bonds in the city of Milwaukee? X

A. Many of them.

Q. Would you say that there were a 100 engaged in that business?

A. In the city of Milwaukee, I would not say there were that many.

Q. Could you give the names of some of the persons who are in or who were in that business in 1921?

Objected to.

Court: He may name some.

A. Yes, I could give a good many of them. Second Ward Securities Company, Morris Fox & Company, Henry C. Quarles & Co., Edgar Ricker & Company.

Q. Are there individuals in Milwaukee engaged in the selling of bonds?

A. Yes, sir.

Q. A large number of them?

A. I suppose if you want to take the time to compile a list of them there would be a large number.

Q. They sell their bonds in the State of Wisconsin?

A. Quite largely. Extensively throughout the state.

Q. Do you know how the stock of the First Wisconsin Company is held?

A. Yes, sir.

Q. Will you state?

A. The capital stock of the First Wisconsin Company is divided [fol. 116] into preferred stock and common stock. The preferred

stock is held very largely by the stockholders of the First Wisconsin National Bank. All of the common stock excepting directors' qualifying shares are held for the benefit of the present and future stockholders of the First Wisconsin National Bank.

Q. There is quite a direct relation then between the First Wisconsin Company and the First Wisconsin National Bank?

A. Yes, sir.

Q. Affiliated capital?

A. Yes.

Q. Can you state the reason for that affiliation?

A. I can tell you the reason for it, yes. The First Wisconsin as such transacts the investment business which would naturally come to such affiliated institutions, and inquiries which come to the affiliated institutions, are turned over to the First Wisconsin Company, it being in that business. In that respect it relieves the bank of that work.

Q. Is there competition between bonding companies as such and National banks?

A. Yes.

Q. And I suppose in that sense, the First Wisconsin Company conducts some of the business that would ordinarily be conducted by the First Wisconsin National Bank?

A. Yes.

Q. Will you state to the Court how a bonding Company comes into competition with National banks?

A. It would come into competition with a National bank in two ways, competition for capital and competition for money which would ordinarily be on deposit with the bank.

Q. By competition for capital, what do you mean?

A. Well in order to establish a National bank it is necessary to sell its stock and somebody has to furnish the money to buy the stock. Bonding houses are also soliciting those people who have funds for investment in securities, and naturally if all of the people who have funds to invest invested it in securities other than bank stock, the bank would be hard pressed to obtain capital on which to operate, and in that sense they are in competition for capital.

Q. Does the First Wisconsin Company pay an income tax?

A. Yes.

Q. And might there not be competition for capital between Companies such as the First Wisconsin Company and the National Bank?

A. Well people investing their money in investment securities pay income tax.

Q. What is the capital stock of the First Wisconsin Company?

A. \$600,000.00 of preferred stock and 10,000 shares of no par value common stock.

Q. From your knowledge of the investment business could you [fol. 117] state as to whether, or in the aggregate the amount of money invested in bonds and other investments and securities in the State of Wisconsin in 1921?

A. To give you a definite figure would be the wildest guess. It runs into many many million dollars.

Q. Your statement that it would be a guess is not directed to the fact that there are many millions?

A. As to the number of millions, I can't say. I can't tell you if it was one hundred million or a billion.

Q. At least it runs into the millions?

A. Yes.

Q. And is there a very large proportion of that held by individuals?

A. Yes, a very substantial proportion of it.

Q. Do you know the amount of capital stock, undivided profits and surplus of National Banks in the State of Wisconsin in 1921?

A. In round numbers, yes. Of National Banks, between fifty and fifty-five million dollars.

Q. And could you give similar figures for State banks?

A. Slightly in excess of that. Between fifty-five and sixty millions.

Q. Can you state as to whether the amount of money invested in bonds and other investments, exceeds the amount invested in National and State Banks in Wisconsin?

A. Yes, sir. Exceeds it many times.

Q. Was that true in 1921?

A. It was.

Q. You stated that there was competition for business between National banks and bonding companies or individuals engaged in selling bonds?

A. Yes, sir.

Q. Will you explain how that competition takes place?

A. That competition might arise in several ways. It might arise directly in that National Banks are authorized to buy and sell securities, or competition would arise in the money which the two institutions would lend. I apprehend that one of the functions of National Banks is to lend money. Investment houses dealing in all kinds of securities would come into competition with such loans especially in short time loans.

Q. Where is this money that is awaiting investment largely held?

A. By individuals.

Q. And I suppose a large part of it on deposit in National banks?

A. Yes, sir.

[fol. 118] Q. And when that is invested, what happens?

A. Money is withdrawn from the banks by the depositor to pay the vendor of the bond.

Q. Are you acquainted with any individuals in Milwaukee engaged in making personal loans or individuals engaged in selling bonds or securities?

A. Yes, I know several of them.

Q. And does the aggregate of their loans made in that way amount to a very substantial amount?

A. Yes, sir. Even those that I am acquainted with.

Q. And there are many that you are not acquainted with, and if you took the trouble to compile a list could you compile a lengthy list?

A. A long list with a large number of names.

Q. Are there others engaged in selling mortgages?

A. Many of them.

Q. Individuals?

A. Yes, sir.

Q. And was that true in 1921?

A. Yes, sir. It was.

Q. And are there any of the so-called Acceptance Companies in Milwaukee?

A. There were. I couldn't say whether there are any now or not. There were in 1921.

Q. And what was the business of those companies?

A. Lending money.

Q. Discounting commercial papers?

A. Yes.

Q. And do they compete with National Banks?

A. Directly.

Q. In what way do they compete with National Banks?

A. Their very business is one of the functions of National Banks. The discounting of notes.

Q. Have the so-called acceptance companies and individuals taken over a large part of the business of National Banks?

A. In my judgment Acceptance Companies do handle large sums.

Q. Are you acquainted with any individuals engaged in selling foreign exchange in the State of Wisconsin?

[fol. 119] A. I know that there are such individuals.

Q. And does the business conducted by them come into competition with National Banks?

A. Directly, yes.

Q. Do you know whether the American Express Company is engaged in selling foreign exchange?

A. Yes, sir.

Q. And selling foreign exchange, is that one of the functions of National banks?

A. It is.

Q. So that there would be direct competition?

A. Yes, sir.

Q. The bond issues which are sold by the Wisconsin Company, are they largely local issues or issues from without the State?

A. Both.

Q. A great portion from out the State?

A. Yes, a substantial amount.

Q. And when these bonds are sold in the State of Wisconsin, where would the money go?

A. It would be where the obligor company is located. I can answer your question by saying that a large proportion of it would go to the East.

Q. Now these various bond houses that you have mentioned as located in Milwaukee, do you know whether their stockholders are citizens of the State of Wisconsin?

A. Very largely so. They might have a few outside of the State,

but not very many. They would be residents of the State of Wisconsin. Some of these companies that I have named are partnerships, in which case the partners are residents of Milwaukee.

Examination by Mr. John C. Russell:

Q. How did you say you were employed by the First Wisconsin Company?

A. As Treasurer.

Q. Are you a stockholder in that company?

A. A preferred stockholder, yes, sir.

Q. What dividend did that Company pay in 1921?

A. 7%.

Q. Is the First Wisconsin Company in any way affiliated with the First Wisconsin National Bank?

[fol. 120] A. It is.

Q. How?

A. Its Board of Directors are the same, and in 1921 the President was the same. The President of the First Wisconsin National Bank and the President of the First Wisconsin Company and three Vice Presidents of the First Wisconsin National Bank were also Vice Presidents of the Wisconsin Company, the First Wisconsin Company.

Q. And the First Wisconsin Company is in competition with the First National Bank in the sale of bonds?

A. Yes, sir. Assuming for that answer that one of the functions of the National Bank is selling bonds.

Q. And how long has the First Wisconsin Company been organized?

A. January 2, 1920.

Q. And did the First National Bank of Wisconsin organize the First Wisconsin Company?

A. I think I know what you mean. The First Wisconsin National Bank through its officers and directors organized the First Wisconsin Company.

A. I think I know what you mean. The First Wisconsin National Bank through its officers and directors organized the First Wisconsin Company.

Q. In other words they organized a Company that was in competition with their own bank?

A. They organized it to take over two of the functions of the First Wisconsin National Bank.

That is all.

Mr. EDWARD C. SCHAUER called and sworn.

Examination by Mr. E. W. Sawyer:

Q. Where do you live Mr. Schauer?

A. Hartford, Wisconsin.

Q. How long have you lived there?

A. Twelve years.

Q. Is there an organization in Hartford known as the Hartford Building & Loan Association?

A. Yes, sir.

Q. Are you an officer of that Association?

A. I am.

Q. What?

A. Secretary and Treasurer.

Q. How long have you held that office?

A. Since December 1, 1916.

[fol. 121] Q. You were such Secretary and Treasurer during the year 1921?

A. Yes, sir.

Q. And have been since?

A. Yes, sir.

Q. Is that Association engaged in the business of loaning money?

A. Yes, sir.

Q. How long has the Hartford Building & Loan Association been doing business over at Hartford?

A. Since December 1, 1916.

Q. What territory tributary to Hartford does it carry on its operations?

A. Within 25 miles of Hartford.

Q. And is the Association permitted to loan money to individuals within that territory?

A. Only to members. To any one in that territory who might become a member.

Q. You are permitted to loan to farmers as well as to city people?

A. Our loans are restricted to farmers and home owners.

Q. Now where do the individuals from whom the Association receives its revenue largely reside? Where do the people or individuals from whom the Association receives its revenue largely live?

A. Within a radius of 25 miles of Hartford.

Q. Now what proportion of them from whom it is received live within a radius of ten miles of Hartford?

A. Oh I should judge about 90%.

Q. Does the Association follow the practice of receiving money from individuals in that community and issuing for the money received a paper called a stock certificate?

A. Yes, sir.

Q. In case the entire amount of money is loaned by the individual to the Association at one time, what do you call the certificate issued to the individual therefor?

A. A paid up stock certificate.

Q. What privilege or right, if any, has such individual to receive his money back?

A. Upon thirty days notice in writing.

Q. He may withdraw what he has invested?

A. Yes, sir.

[fol. 122] Q. In the event that he withdraws money upon a thirty day notice, what percentage of money on the principal has the asso-

ciation prescribed in respect to paying such holders of such stock certificates?

A. The amount agreed upon when placing the money in the Association.

Q. What is the present prevailing rate?

A. Five per cent.

Q. That is paid to the holder of a fully paid stock certificate?

A. Yes.

Q. And how long has that rate prevailed?

A. Since 1920, I think.

Q. Prior to that time did a higher rate prevail?

A. Yes, we have paid as high as $5\frac{1}{2}\%$ and as low as 4% .

Q. How often are these payments required to be made to the holders of such papers?

A. The dividends are required to be paid the last day of December and the last day of June of each year.

Q. And if I understand you correctly, a holder of one of these fully paid certificates is required to be paid what ever rate is paid every six months, and for the last three years including 1920 and 1921, that rate has been 5% ?

A. Yes, sir.

Q. Is the privilege of placing money and receiving such a certificate restricted to any particular class of people within your territory?

A. No, sir.

Q. What has been the practice of the association since it was organized in receiving all funds or moneys so brought to the Company?

A. The practice has been to receive the money and place it in the Depository voted by the association.

Q. Has the Company during any time it has been doing business ever refused to take such money? When and under what circumstances?

A. We have refused to take paid up stock money during the period of 1923, from about the first of March until the first of April.

Q. And that was for what reason?

A. Because our demands were not as great as the receipts.

Q. It was during the period that the United States Government was redeeming the, or paying the War Savings Stamps of the 1923 issue?

A. Yes, sir.

[fol. 123] Q. And it was for that reason that you were flooded with funds?

A. Yes, sir.

Q. Excepting for that period, has the Association always taken money from those offering it?

A. Yes, sir.

Q. I understand that this practice is open to all individuals within your territorial limits?

A. Well, as I explained, we can receive money from outside of the 25 mile radius, but we can only make loans within a radius of 25 miles.

Q. Well then the practice is open to all people, to bring money to the association and receive a certificate for it?

A. Yes, sir.

Q. In the case that an individual does not care to acquire a paid up certificate, but desires to pay into the Association, what form of a certificate is issued to him?

A. We issue an installment stock certificate.

Q. And has the individual holding the so-called stock certificate the same privilege of demanding and receiving his money that the holder of a paid up stock certificate has?

A. No, sir.

Q. In what respects to their rights differ?

A. Installment stock certificate can withdraw their entire amount of money paid in at any time, but is penalized if he withdraws within one year. He will receive no dividends. If he withdraws after one year he will receive 70% of the dividends granted.

Q. In any event he would receive, he would be entitled to receive his entire principal paid?

A. He would also receive his entire principal. Of course the by-laws provide that a thirty day notice be given.

Q. Supposing that a holder of a so-called stock certificate does not withdraw until after the certificate is matured, what, if any, forfeiture of accumulations upon the earnings does he incur?

A. He doesn't incur any, but is compelled to surrender his stock.

Q. What do the greatest portion of the net proceeds of the earnings of the association consist?

A. The interest received from mortgage loans.

Q. And as the Company receives its revenues it re-invests its funds?

A. In first mortgages.

Q. And the interest received from these first mortgages or loans is the principal source of your earning power?

A. Yes, sir.

Q. And the individuals who are members of your organization receive their proper share of the net interest earnings when accumulations are pro rated?

A. Yes.

Q. Are there any dues payable to the Association by the holders of the so-called fully paid certificates?

A. No, sir.

Q. Mr. Schauer, have you with you the record of the financial condition of the Hartford Build- & Loan Association at the close of business on December 31, 1921?

A. Yes, sir.

Q. What amount of loans, mortgage loans, were outstanding at the close of business of your Association at that time?

A. \$136,664.86.

Q. Were there any other loans outstanding at that time besides the mortgage loans?

A. Yes, sir.

Q. What is that amount?

A. \$1,740.00.

Q. What kind of a loan is that?

A. That is what we left as a stock loan made to a member or holder of stock who borrows money from his own account.

Q. What was the amount of the holders of paid up stock at that date?

A. \$77,502.71.

Q. Does that represent individuals that held the so-called five per cent fully paid stock?

A. Yes, sir.

Q. And what was the amount of outstanding installment certificates on that date?

A. The amount in dollars?

Q. Yes, sir.

A. \$43,691.85.

Q. Together, what do they amount to?

A. \$121,194.56.

Q. Have you statements showing the amount or condition of the business of this association for the period ending June 30, 1923?

A. Yes, sir.

[fol. 125] Q. What was the amount of outstanding mortgage loans that the Company had at that date?

A. \$187,483.77.

Q. And what amount of stock loans?

A. \$113,524.44.

Q. You misunderstood me?

A. \$2,737.34.

Q. And what was the amount as represented by individuals holding these so-called paid up stock certificates at that date?

A. \$113,524.44.

Q. And what amount at that date were holding installment certificates?

A. \$62,549.41.

Examination—Mr. John C. Russell:

Q. When people bring money to the Building and Loan Association and turn it over, what is done with that money?

A. I receive the money, give them a certificate and take it as soon as we have a reasonable amount together down to the First National Bank of Hartford, and place it on a check account.

Q. And the First National Bank gets practically all of your business?

A. It has done all of our business since we organized, yes, sir. That is all.

Examination by Mr. E. W. Sawyer:

Q. Your purpose in taking it there is, well to leave it there until you want to take it out?

A. We aim to keep our money working.

Q. And the large amount of loans that you have now requires it?
A. Yes, sir.

Examination by Mr. John C. Russell:

Q. Do you have considerable amounts on deposits at the First National Bank?

A. Yes, we had this Spring as high as \$14,000.00, at one time.

Q. Drawing interest?

A. No, sir.

Examination by Mr. E. W. Sawyer:

[fol. 126] Q. That was an exceptional condition of affairs, was it not?

A. Yes, sir.

Q. During 1921 you were quite an extensive borrower from the First National Bank?

A. No, I don't think very much.

That is all.

Mr. J. G. LIEVER.

Examination by Mr. J. C. Russell:

Q. Who were the directors of the bank on May 1, 1921?

A. Well, Mr. Kissel, Otto, W. E. Sauerhering, E. W. Sawyer, Peter Westenberger, A. G. Laubenstein, J. H. G. Lieven, Bruno Jordan, J. G. Liever and August Westphal.

Q. The stock in the First National Bank was for some years previous to March 1, 1921?

A. Yes, sir.

Q. How long?

A. Ever since we started.

Q. In 1920 and 1921 was your bank in the business of selling farm bonds?

A. Wisconsin Farm mortgage loans, yes, sir.

Q. Where do you get those bonds from?

A. From the Wisconsin Securities Company in Milwaukee.

Q. How extensive a business did you do in that line?

A. Oh, we sold in 1921 in the neighborhood of \$30,000.00 or \$40,000.00.

Examination by Mr. E. W. Sawyer:

Q. Under what circumstances were those bonds bought and sold?

A. In the first place they were bought for our own investment, but we sold some to our clients when they wanted an investment, a good investment.

Q. But that was not the prime purpose of purchasing them when you bought them?

A. Oh, no.

That is all.

Mr. W. T. LEINS sworn.

Examination by Mr. E. W. Sawyer:

Q. Where do you live Mr. Leins?

A. In West Bend.

[fol. 127] Q. Are you an official of Washington County, Wisconsin?

A. Yes, sir.

Q. What official?

A. Register of Deeds.

Q. How long have you been Register of Deeds of Washington County, Wisconsin?

A. Nearly seven years.

Q. Were you such Register in the year 1921?

A. Yes, sir.

Q. As such, have you the custody of the records of real estate mortgages in this county?

A. Yes, sir.

Q. Have you made a compilation of the amount of mortgages that were recorded in Washington County, Wisconsin, in the year 1921, in which the mortgages were individuals?

A. Yes, sir.

Q. When did you make that compilation?

A. Yesterday.

Q. At whose request?

A. At your request.

Q. What is the amount of these mortgages?

A. \$1,507,810.54.

Q. So far as you know, were the mortgagees residents of this State?

A. It is very seldom that we have any mortgages to record in which the mortgagees are non-residents.

That is all.

Mr. C. W. SAYLES sworn.

Examination by Mr. E. W. Sawyer:

Q. Mr. Sayles, where do you live?

A. Hartford.

Q. How long have you lived in Hartford?

A. About 20 years.

Q. What business have you been engaged in say during the last 10 years?

[fol. 128] A. Selling mortgages.

Q. Where do you do your business?

A. In Hartford and vicinity.

Q. What amount of outstanding mortgages have you sold to individuals residing in the vicinity of Hartford, Wisconsin, approximately?

A. Why, about \$500,000.00.

Q. Where did the money go for which these mortgages were purchased?

A. It went to the western states.

Q. Practically all of it?

A. Practically.

Q. Have you made any loans particularly during 1922 and 1923?

A. No.

Q. And you had practically that amount of mortgage loans outstanding that you had sold in the course of business, in 1921?

A. Yes, sir.

Q. Were these interest bearing securities?

A. They were.

Q. What was the approximate rate of interest which they drew?

A. 6%.

Examination by Mr. J. C. Russell:

Q. Did you negotiate those loans yourself or did you get them from some Company?

A. From banks and Loan Companies, some from Peters & Co., Minn., and Central Mortgage Company, Minnesota, and Interstate Securities Company, Minnesota.

Q. Does that \$500,000.00 represent what you had outstanding during any one time?

A. That was the entire time.

Q. During the last ten years?

A. Yes.

Q. When did you first start in the business?

A. In 1906.

Q. And you were in the loaning business up to 1921?

A. Yes, sir.

[fol. 129] Examination by Mr. E. W. Sawyer:

Q. On an average, how long did they run before they matured?

A. Usually five years.

Examination by Mr. J. C. Russell:

Q. There are two banks in Hartford, are there not?

A. Yes, sir.

Q. There were three, I think, in 1921?

A. Yes, sir.

Examination by Mr. E. W. Sawyer:

Q. One of those banks has since gone out of business?

A. Yes.

Examination by Mr. J. C. Russell:

Q. What became of it?

A. It was taken over by the First National Bank.

Mr. AUGUST F. WESTPHAL sworn for defendant.

Examination by Mr. J. C. Russell:

Q. Where do you live Mr. Westphal?

A. In Hartford.

Q. Were you a director in the First National Bank in 1921?

A. Yes, sir.

Q. You own stock in the bank?

A. Yes, sir.

Q. What became of that stock?

A. I sold part of it and I have some shares left.

Q. How many shares did you sell?

A. 35.

Q. Who did you sell the stock to?

A. To Mr. Sauerhering.

Q. All of it?

A. No, some to Bruno Jordan.

Q. Did you sell some to Alvin Jordan?

A. I sold it to Bruno Jordan and what he did with it, I don't know.

[fol. 130] Q. When did you sell that stock?

A. Two years ago.

Q. What did you get for that stock?

Objected to.

Objection overruled.

A. I sold some of it for \$225.00 and some for \$250.00.

Examination by Mr. E. W. Sawyer:

Q. Was that subsequent to May 1, 1921?

A. I don't know.

Q. You don't know whether it was before or after?

A. I can't say.

That is all.

Mr. WILLIAM RADTKE sworn for defendant.

Examination by Mr. J. C. Russell:

Q. What official position do you hold in the city of Hartford?

A. City Clerk.

Q. How long have you been city clerk?

A. Six years.

Q. You were City Clerk in 1921?

A. Yes, sir.

Q. Is the Hartford High School a separate taxing unit in the City of Hartford?

Objected to.

Objection overruled.

A. Well, it is, yes.

Q. What was the amount of taxes raised for the Hartford High School in the year 1921?

Objected to.

Objection overruled.

A. Well, I don't know exactly for the High School.

Q. What was the amount of taxes levied for the High School?

A. I haven't it for the High School, but I have it separate for the South Side School?

[fol. 131] Q. Well, about? You gave me those figures at one time, did you not?

A. \$23,000.00 is what they levied. A little over \$23,000.00, \$23,578.00, was the total of the tax.

Q. Is there also a separate taxing unit for District No. 4?

A. Yes.

Q. What does that consist of? What territory is included?

A. The First Ward and the Fourth Ward of the City of Hartford and part of the town of Hartford.

Q. Do you know what was the amount of taxes levied for the city of Hartford for the year 1921?

A. \$7,238.00.

Q. Do you know what the county taxes were?

A. I don't know.

Q. I mean the county tax paid by the City of Hartford?

A. I haven't the exact figures here with me now. The exact figures are here in West Bend in the tax roll.

Q. I will refresh your memory (Showing paper). County tax was \$25,268.51. State taxes, \$9,539.39. Q. Do you recollect the dates that the Board of Review met in the Council Chamber to revise the assessment?

A. In 1921, on July 5.

Q. And continued in session how long?

A. Until July 11.

Q. Inclusive?

A. Yes, sir.

Q. Was it July 11 or July 12? Can you recollect?

A. The books I have home would tell exactly, but I thought it was July 11.

Q. (Showing paper.)

—, I think it should be July 12.

Q. The First National Bank did not appear in any manner to protest any assessment made by the Board of Review?

A. Not in 1921.

Q. Did you post notices in the City of Hartford?

A. Yes, sir.

Q. Where did you post those notices?

A. One on the City Hall Door.

[fol. 132] Examination by Mr. E. W. Sawyer:

Q. You testified to the amount of tax that was levied for the Hartford High School. Were you testifying as to what appeared in the record book before you, or were you testifying or reading from the complaint.

A. Yes, I was reading from the complaint.

Q. You were reading from the complaint in respect to the amount of the county tax?

A. Yes.

Q. Now, do you know whether or not the tax that was levied by the Hartford High School for the city of Hartford for the year 1921, was made by a resolution levying the tax upon the taxable property of the city of Hartford?

A. Do you mean by resolution of the school or Council?

Q. Of the school.

A. That I don't know. I was not at the meeting.

Q. When you received from the High School Clerk a copy of the resolution levying taxes, its resolution provides for the levying of that amount on the taxable property of the city?

A. Yes, sir.

Q. Do you know whether or not this annual High School meeting was before or after May 1?

A. It was after May 1. On the fourth Monday of June, I think.

Q. Have you any time up to date received circular letters from the Wisconsin Tax Commission relating to taxes upon the shares of stock of National Banks?

A. I have not.

Q. Has anything of that kind come to you as City Clerk?

A. No, sir. Not that I recollect.

Q. Have you made any inquiries?

A. No, sir.

That is all.

Mr. E. W. SAWYER sworn for defendant.

Examination by Mr. J. C. Russell:

Q. Are you an officer of the Hartford High School?

A. I am an officer.

Q. What officer?

A. I am Director.

[fol. 133] Q. Were you Director in 1921?

A. Yes, sir.

Q. Did you attend the school meeting?

A. Yes, sir. You mean the annual school meeting?

Q. Yes.

A. Yes, I did.

Q. Did you assist in voting the levying of the tax?

A. I voted for the levy of the tax as a citizen of Hartford, but not in any sense as a stockholder or director of the First National Bank.

Q. But you were a stockholder and director of the First National Bank?

A. Yes, sir, but I didn't attend the school meeting in that capacity.

Q. Was Mr. Andrew Esser there?

A. Yes, I think he was.

Q. He is another stockholder?

A. Yes.

Q. Was Mr. Liever there?

A. I don't know.

Q. Was Mr. Lieven there?

A. My impression is that at the annual meeting that was held on the fourth Monday of June, that Mr. Lieven was there. If I recall, we had an adjourned meeting.

Q. It was a largely attended meeting?

A. Yes, but it was over the election, when I came up for election?

Q. You were elected? Got elected?

A. Yes, I did.

That is all.

Mr. CHARLES FRIDAY sworn for defendant.

Examination by Mr. J. C. Russell:

Q. Are you an official of the Hartford High School, Mr. Friday?

A. Yes, sir.

Q. Were you present at the annual meeting in 1921?

A. Yes, sir.

Q. You know the different stockholders of the First National Bank?

A. A few of them.

[fol. 134] Q. Do you recollect what stockholders were present at that meeting that night?

A. Mr. Sawyer was present, Mr. Lieven and I think Mr. Liever, but I am not positive about it. Mr. Esser was there. We had quite a turnout. Pretty nearly everybody was there that had a right to vote.

Q. Do you recollect any others that were there?

A. No.

Examination by Mr. E. W. Sawyer:

Q. The reason for the size of the meeting was because of the contested election of the Director of that School Board, and there was no contest at that meeting in reference to any tax?

A. No.

Q. Now, Mr. Friday, it is customary in voting a tax at those meetings by resolution, to vote a tax on all the taxable property in the city, or in the school district?

A. Yes, sir.

Mr. JACOB HAHN recalled.

Examination by Mr. J. C. Russell:

Q. I believe you testified, in 1921, that you were the Assessor of the City of Hartford?

A. Yes.

Q. Some time after April 1 and June 1, 1921, did Mr. Liever hand you a statement of the stockholders and number of shares of the First National Bank?

A. I believe he did. I call for it every year. Unless I am mistaken it was the same as last year.

Examination by Mr. E. W. Sawyer:

Q. You are entitled to do that under the law?

A. Yes.

Q. And Mr. Liever is required to give that statement?

A. Yes.

Q. Have you received any circular letters from the Wisconsin Tax Commission in reference to taxing shares of stock in National Banks?

A. Well, last year, this summer here, when I was pretty near done assessing, I got a letter from the Tax Commission.

Q. Did you receive more than one?

A. No, sir.

[fol. 135] Q. Do you remember about the time you received that letter?

A. No, I know I got it when I was pretty near done, but I was done assessing the bank.

Q. What time did you finish assessing the banks, or finish your assessment?

A. The middle of June.

Q. Did that letter that you received contain any provisions in reference to bank taxes?

Objected to.

Objection overruled.

Q. Did the letter that you received have a statement or something in it in reference to what disposition should be made?

A. Yes, sir.

Q. I will ask you to read the last paragraph of that. (Handing paper.)

A. In our opinion the right to tax banks during these two years is so doubtful that a compromise of their taxes on the best basis available is desirable. You will observe that in Circular 786 we suggested payment of not less than 50 per cent of the regular stock tax. Many compromises have been made on this basis and some at a higher rate. For aught that appears in the correspondence, we see no reason why unpaid taxes for the years 1921 and 1922 should not be adjusted on the basis outlined in our circular.

Q. Did you receive a letter containing a provision somewhat similar to that?

A. No, sir.

Q. Didn't you receive Circular No. 786 from the Wisconsin Tax Commission?

A. No, sir.

Q. Do you know where that circular letter is that you received?

A. I burned it up. I cleaned out my desk a couple of weeks ago.

Q. Was there anything in it in reference to settling or compromising with National Banks for the year 1920 and 1921?

A. Nothing.

Q. For 1921 and 1922?

A. No, sir.

Mr. JOHN G. LIEVER recalled for plaintiff.

Examination by Mr. E. W. Sawyer:

[fol. 136] Q. Mr. Liever, have you a stock certificate book from the First National Bank here?

A. Yes, sir.

Q. I will hand you what purports to be such book and ask you if that is such book?

A. That is the book.

Q. The stock certificate book of the First National Bank of Hartford, Wisconsin?

A. Yes, sir.

Q. Does that show when the sales were made of the stock of August F. Westphal, testified to by him?

A. Yes, sir.

Q. When was the first sale made?

A. The first sale of that stock was made March 6, 1922.

Q. To whom?

A. Mr. Sauerhering.

Q. How many shares?

A. 25.

Q. When was the next sale made?

A. On March 8, 1922, four shares to Mr. Jordan. The same day four shares to Mr. Alvin Jordan. In Dec. 6, 1922, five shares to Andrew Esser and five to John A. Becker.

Examination by Mr. J. C. Russell:

Q. Does that include or does that record show the date when the old certificate- were surrendered for cancellation?

A. The same day.

Q. Is that when it was?

A. This shows the date of the transfer of the Westphal stock to the different individuals.

Q. Where are the originals with the assignment on the back, or was there an assignment on the back? The certificate is usually assigned.

A. This is the second stock book. The others were pasted back on the stub. The certificates.

Q. What became of the old certificates that were assigned?

A. There were pasted back on the stub. They were issued from the other book.

Q. You have that book here?

[fol. 137] A. No, I have not. But the original is just like this. It is pasted back on the stub where it is taken off.

Mr. EDWARD RUSSELL, called out of order on plaintiff's main case, sworn for plaintiff.

Examination by Mr. E. W. Sawyer:

Q. Mr. Russell, where do you live?

A. In Hartford.

Q. In what business are you engaged?

A. Well I am in the insurance and loan business.

Q. Have you been in the loan business for at least ten years last past?

A. Yes, sir.

Q. At Hartford?

A. Yes.

Q. Where do the individuals for whom you have loaned money for the last ten years reside?

A. Well in the city of Hartford and surrounding country.

Q. Have you loaned out money from time to time to such individuals on interest bearing securities?

A. Yes.

Q. What was the nature of these loans?

A. Well bonds and mortgages.

Q. And where was the land on which the mortgages were given?

A. North Dakota.

Q. And what was the average rate of time for which these securities ran before they matured?

A. Three to five years.

Q. What was the average rate of interest?

A. Six per cent.

Q. What amount have you loaned out up to the close of 1921 on such securities?

A. Well that is a private affair of mine.

Q. Well I don't care to pry into your private affairs, but I would like to have a fair statement as to the amount of loans that you have [fols. 138-142] made out in the western country.

A. I decline to answer that question.

Q. Well I think that it is proper. What is your particular reason? Was the amount large or small?

A. I decline to answer.

Q. You are a brother of Attorney J. C. Russell in this case?

A. Yes, sir.

Q. You were subpoenaed to attend the trial of this case?

A. Yes, sir.

A. And I spoke to you about testifying before you were subpoenaed?

A. Yes, sir.

Q. You didn't tell me at that time that you would decline to testify?

A. No, sir, I didn't. I asked you what you wanted.

Q. I told you I wanted you to testify to approximately the amount of money you had loaned out?

Court: He need not answer that.

Testimony closed.

(Here follow Defendants' Exhibits Nos. 1, 2, 3, and 4, marked side folio pages 143, 144, 145, and 146.)

[fols. 147-160] COLLOQUY BETWEEN COURT AND COUNSEL

Whereas, a dispute arose as to the following questions and answers, viz:

Mr. Russell: Defendant claims that the 5th question on page 28 of the transcript of the reporter should be "Was it worth \$25,000.00 annually as an asset?" and the answer of Mr. Liver was "I think so."

The defendant further claims that the next question was as follows: "Was it worth \$50,000.00 annually?" and his answer was "I don't know."

The next question was "It was worth somewhere between 25 and \$50,000.00, was it not?" and the answer was "I think so."

Mr. Sawyer: The plaintiff claims that the testimony as transcribed is the correct testimony given pertaining to the matter; that the testimony as transcribed is correct.

By the Court: The court feels that it must be guided by the testimony as certified to by the reporter and is unable at this time to decide which position is correct.

Mr. Russell: The defendant claims that on page 31, question 9, should refer back to the year 1921—"Referring back to the year 1921, do you know what was the book value—" "Referring back to the year 1921, do you know what the book value was on the shares of stock of the First National Bank?" That is what I claim the question was.

Mr. Sawyer: The plaintiff claims that the question pertained to [fol. 161] loan value.

Mr. Russell: Again after the word "Approximately" in the 10th question it should be, the answer should be, "There was no book value established."

Mr. Sawyer: The plaintiff claims that the answer was and pertained to loan values as shown by the answer to the very next question.

By the Court: Put down the same ruling, that the court feels that it must abide by the minutes of the reporter.